

A
L E T T E R

T O

LORD VISCOUNT HOWE,

FIRST LORD OF THE ADMIRALTY,

ON THE SUBJECT OF A LATE
DETERMINATION,

A T T H E C O C K - P I T,

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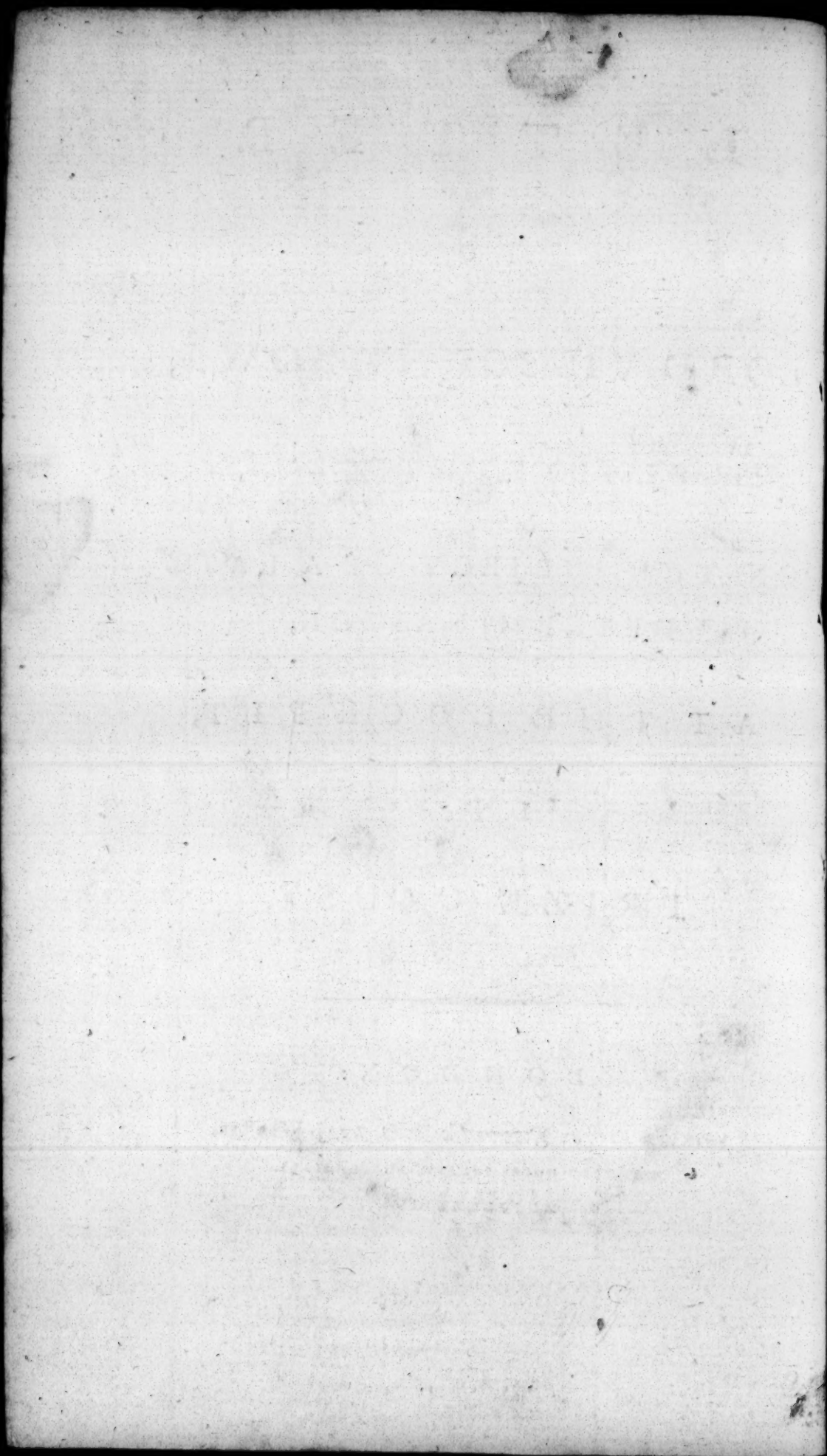
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MDCCLXXXVII.



A
L E T T E R
T O
L O R D V I S C O U N T H O W E .

MY LORD,

A LATE determination at the Cockpit, in a prize cause, has excited a good deal of attention; the professed principle of that determination, was that of giving to his Majesty's land forces, a different and larger share in prizes than they are entitled to under the prize acts as part of the crews. The introduction of so new a principle and the mode adopted for attaining it's object, could not fail to give alarm. I have endeavoured, in the following pages, to examine the grounds upon which it is founded, and the means employed to accomplish the end proposed, namely the determining, that the whole belonged to his Majesty *jure coronæ*, that his Majesty might afterwards grant it, in a different manner than the prize act directs.

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I need make no apology for addreſſing to your lordſhip a paper, which relates to a queſtion intereſting in ſo high a degree to that great and favourite ſervice, at the head of which your lordſhip is now placed, and to the honour and proſperity of which, you cannot be indifferent.

It has been the policy of this country, and under that policy it has roſe and flouriſhed, to encourage the exertions of his Maſteſty's ſea forces in time of war, by giving them a right to all prizes taken from the enemy.— This policy has alſo extended to privateers who are authorized by commiſſions to make prizes for their own behoof, and the right has not in either caſe been confined to what they may take at ſea, but they are entitled to make prize of the goods of the enemy wherever they can find them, by landing and taking even caſtles or fortrefſes on land.

At the breaking out of a war, his Maſteſty iſſues a proclamation, giving his right to all prizes to the crews of the ſhips or veſſels in his ſervice who ſhall take them, and declares the proportion by which ſuch prizes ſhall

shall be distributed ; and an act of parliament afterwards passes, confirming the grant in his Majesty's proclamation. There is no reserve of any sort made to the crown ; the whole is given freely, but absolutely, and the public faith is pledged to the individuals. This is not a grant which admits of nice interpretation upon the words, in order to narrow the construction ; it is a reward held out for the public benefit, to encourage extraordinary exertions in those who are employed in the sea service, and any attempt to take hold of critical constructions of the grant, tending to disappoint the substantial, universal, and liberal meaning, can only serve to discourage and disgust the service, and disappoint those salutary effects which his Majesty and Parliament had in view. Sailors are not supposed to be lawyers or casuists, and if, after believing that prizes were given to them, they shall find that by acute law distinctions, the right of the crown is still reserved, they will put no faith in the proclamation or act of parliament, they will consider themselves as ill treated and imposed upon, and the service will be in a worse situation than if no grant of prizes had ever been made.

The policy which induced this country to make a grant of prizes to the sea service, I take to have been two-fold. 1st, That in naval operations, it requires a very uncommon exertion of almost every individual in a ship to ensure success, and an eagerness and zeal in every distinct commanding officer, which no discipline can inspire. 2dly, The pay of the officers of the navy is so low, when compared to those of equal rank in the army, that it is necessary to throw the right of prize money into the scale in order to induce proper persons to engage in that glorious but hazardous and fatiguing service. It operates in some respect as a tontine or lottery, for though a small number only are fortunate adventurers, yet the success of a few is sufficient to give zeal, enterprise and exertion to all.

If in the case of a tontine or lottery it should be determined, upon any nice construction of the words of the act, that the successful adventurer or holder of a fortunate ticket was not to receive the money, but that it reverted to the crown, is it likely
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that tontines or lottery tickets, would ever afterwards sell at a premium ?

I have heard the question asked, why are prizes given to the Navy, and nothing of the sort allowed to the army ; The answer I apprehend is, that the experience of all nations and all ages has shewn, that armies which have been allowed plunder or booty, have been ruined ; that strict discipline has become afterwards impossible, and that it has been found unnecessary, to add that dangerous incitement to the zeal of soldiers, except upon very extraordinary occasions.— The high pay, the prospect of preferment, added to the love of glory, and strict discipline, has been found sufficient to render armies formidable without the hazardous expedient of giving them booty. Besides, armies act in general in a body, and under the immediate eye of their commander in chief ; every failure in duty, in any corps, every appearance of want of strict discipline can be ascertained and punished,

But with regard to the sea service, it is but seldom that fleets have occasion to act in

a body, each ship has innumerable occasions to act separately and detached, and even when they do act in a body, it is extremely difficult to ascertain and fix their degree of misconduct. If they act merely according to the rules of strict discipline, without extraordinary exertions, little public service will be done. In so complicated a machine as a ship, it is often next to impossible to determine, whether an omission of service proceeded from want of zeal, or from necessity or accident. Sailors too, it has been found, are not apt to be rendered unfit for future service by receiving prize money; in general their generous temper and high spirits when on land, induces them to waste it in a short time, and they return to sea with the same alacrity and zeal as before. *

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* It might be added, that the peculiar and most decisive merit of an army, is confessedly not individual exertion, nor even the courage of individuals, but a most perfect and complete obedience, in so much that the noblest instances of individual boldness have been far oftener recorded for their fatal consequences than for their success. An army prize act would be a statute of political suicide; but with regard to seamen, they are embarked together in one narrow bottom, they are ever of necessity under the immediate eye and even voice of their officers ;

Whatever may be the cause, the fact is certain, that this nation became masters of the sea, under the system of giving all prizes to the crews; and it is equally certain, that our armies have distinguished themselves in all parts of the world, without any general law for giving them booty or plunder, and I believe it will be found, that in those extraordinary instances, where booty has been given, the effect has not proved favourable to strict discipline.

Let none however, attempt to excite jealousy between the two services. They are both respectable, they are in time of war, both necessary; but our situation as an island, demands a powerful fleet. To become an able and expert seaman, requires a long and painful education, and almost a lifetime of hardships and fatigue. At the time sailors are wanted to serve against the enemy, the trade of the kingdom also demands them, and can afford to tempt them

officers; the most licentious amongst them has not power to withdraw himself, and is not, while on board, exposed to dissipation, nor in danger of being surprised by the return of a defeated enemy.

by high premiums. Take away prize money, and consider the additional difficulty you would have, notwithstanding the impress in manning the fleet. With what zeal do you think they would serve after they are on board. But with regard to the officers, I can assure your Lordship, as the opinion of some as respectable men as any in the service, that if the public would put them on the same footing as the army, with respect to pay, in proportion to their rank, the officers of the navy would with pleasure renounce all claim to prize money in any future war.

I am, induced, to submit to your Lordship, these preliminary observations, in order to throw light upon a case, which if I understand it rightly, deserves not only your Lordship's very serious attention, but that of the public at large.

A N expedition was sent out against the *Cape of Good Hope*, in the year 1781, consisting of a squadron of men of war, under the command of *Commodore Johnstone*, and a body
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of land forces under the command of *General Medows*.

When they arrived on the southern coast of *Africa*, a detachment of the squadron took a Dutch East-Indiaman, by which means, they obtained intelligence that a force equal to theirs, of *French* ships of war, had arrived before them at the *Cape*, and had reinforced the Dutch garrison with 500 men, among whom were 80 or 90 artillery men, but at the same time they learnt that five Dutch East-Indiamen homeward bound, and richly laden, were lying in the Bay of *Saldahna*, about forty miles North of the *Cape*. *Commodore Johnstone* determined to take or destroy these ships: *General Medows* thought it a wrong measure, and threw the responsibility of it upon the *Commodore*. The squadron entered the Harbour: every previous preparation had been made, to extinguish fire in the Dutch ships, in case they should themselves attempt to burn them. It was lucky this was foreseen, for the *Dutch* set fire to the five ships and ran them on shore, but the fire was extinguished in all of them except one, called the *Middleburgh*.

burgh. There was great danger to the whole from the burning of that ship, as she was near coming on board the others, but the Commodore determined to tow her off to a distance by his boats. This service was exceedingly hazardous and required dispatch, he went himself in one of the boats, and led on the others, and whilst the melted metal was pouring down from the burning ship, and the greatest risk of her blowing up, he himself fastened the grapple, and by the exertions of his own and the other boats, she was towed to a proper distance, and blew up in ten minutes after the boats had left her.

Two only of these prizes arrived safe in *England*, and a question arose in the Admiralty Court, whether the troops commanded by *General Medows*, were only entitled to a share along with the crews of the ships, or were entitled to a separate and larger share to be divided amongst them, leaving the remainder to the Navy. This claim was set up by the troops, as falling within the King's instructions delivered to the Commodore and the General before they sailed, which

which directed, “ That the *booty* which
 “ should be gained from the enemy by the
 “ joint operations of the navy and army *at*
 “ *the attack of the Cape of Good Hope*, should
 “ be divided into two shares, according to
 “ the numbers mustered in each service,
 “ and that one share should go to the army
 “ and the other share to the navy.” And it
 was contended that the taking of the five
Dutch East-Indiamen in *Saldahna Bay* was
 (within the spirit of the instructions) an
 attack on the *Cape of Good Hope*.

On the other hand the navy contended,
 that the instructions only related to the *Cape*
of Good Hope, and not to ships taken by
 the squadron either at sea, or in bays or
 harbours of any sort.

The Judge of the Admiralty decreed,
 “ for the interest of the army agreeably
 “ to the spirit of his Majesty’s instruc-
 “ tions.”

An appeal was brought by the navy, to
 the commissioners appointed to hear and de-
 termine appeals in prize causes, and after
 the

the cause was argued for two days, their Lordships conceiving that the crown had an interest in the question, directed the King's Advocate General and other counsel for the crown to attend. A further argument was heard against the right of the crown, but their Lordships determined that the capture in this case belonged neither to the navy nor to the army, nor to them jointly, but was still in the King in right of his crown.

This determination, which was unexpected by both parties, has excited much attention, and seems of the most serious consequence to the political system, by which our naval operations have been hitherto carried on. It is my intention after having given this short view of the nature of the dispute, to examine the question in every view in which I think it can be stated; I shall narrate the facts and arrange the arguments on both sides, as fully and fairly as I am able, and shall make such observations upon the whole as the importance of the question seems to require. I can say nothing new to your Lordship, upon the subject, you are well acquainted with the case, and have con-

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sidered it in every view, but I am persuaded, it will give pleasure to your Lordship, that the public at large should be informed of the nature of a question, which I may venture to say your Lordship in common with your brother officers, considers in a very serious light.

Immediately after it was resolved that hostilities should commence against the States General, his Majesty declared in counsel on the 22d December 1780, his royal intention to give to the captors “ all such prizes as
 “ should be taken from the subjects of the
 “ States General of the united provinces
 “ during the hostilities that should be commenced against them,” and next day, the 23d of December 1780, a proclamation issued concerning prizes to be taken in that war, which was followed by an Act of Parliament, by both of which, it was declared, “ that
 “ the officers, seamen, marines, and *soldiers*,
 “ on board every ship or vessel of war in his
 “ Majesty’s pay, should have the sole interest and property in all ships, vessels,
 “ goods, and merchandizes which they
 “ should take from the enemy, after the
 “ same

“ same should be condemned as lawful
 “ prize to his Majesty.” *

No

* The act which is the 19th Geo. 3d. cap. 67, is entitled,
 “ An Act for the encouragement of seamen, and the more
 “ speedy and effectual manning his Majesty’s navy.” The
 1st section of the act grants all prizes to the King’s ships
 in the words already stated. And the 2d section directs the
 admiralty to issue commissions to privateers “ for the
 “ attacking, surprizing, seizing and taking, by and with
 “ such ship or vessel, or with the crews thereof, *any*
 “ *place or fortress upon land*, or any ship or vessel, goods, am-
 “ munition, arms, stores of war, or merchandize belonging
 “ to, or possessed by any of his Majesty’s enemies upon the
 “ land, or in any sea, creek, haven or river. And that such
 “ ship or ships, vessel or vessels, or any arms, ammunition,
 “ stores of war, goods and merchandize whatsoever, with all
 “ their furniture, tackle and apparel, so to be taken, by or
 “ with such private ship or vessel according to such commis-
 “ sion or commissions, after final adjudication as lawful prize
 “ in any of his Majesty’s courts of admiralty as aforesaid,
 “ and not before, *shall wholly and entirely belong* to and be di-
 “ vided between and among the owner and owners of such
 “ ship or vessel, *and the several persons who shall be on board*
 “ *the same, and be aiding and assisting to the taking thereof*, in
 “ such shares and proportions, as shall be agreed upon with
 “ the owner or owners of such ship or vessel as shall be the
 “ captor thereof, their agents or factors, as the proper goods
 “ and chattels of such owner or owners, and the persons who
 “ shall be entitled thereto by virtue of such agreements among
 “ themselves; *and that neither his Majesty, his heirs or succes-*
 “ *sors*, or any admiral, vice-admiral, governor, or other per-
 “ son commissioned by, or claiming under his Majesty, his
 “ heirs

No mention is here made, of *booty* which is distinguished from prize, nor from the place where the goods or effects of the enemy are seized, but from the nature or description

“ heirs or successors, or any person or persons whatsoever,
 “ other than the owner or owners of such ship or vessel, being
 “ the captor of such prize ship, or vessel, arms, ammunition,
 “ stores of war, goods and merchandizes, and the persons
 “ claiming under him or them, shall be entitled to any part
 “ or share thereof, (except as to the custom and duties payable by any act or acts of parliament) any custom, statute,
 “ or law, to the contrary notwithstanding.

“ Provided always that nothing in this act contained, shall
 “ entitle any ship having a commission, and which shall receive orders from and put herself under the convoy of any
 “ of his Majesty's ships or vessels, to share in any prize or
 “ prizes taken by such convoy, or by such ship having a
 “ commission, whilst the said commissioned ship shall remain
 “ under the care and protection of such convoy.”

The power is here given in express words to privateers to take *any place or fortresses upon the land*, probably because some question had been made with regard to their power to do so; but the power of his Majesty's ships to take such fortresses on the land, had never been questioned, and therefore the power is, as to them, given, as in all former cases, by general words only.

Until the above clause concerning convoys, was introduced, privateers which sailed with convoy, were entitled to share in prizes.

tion of the force by which they are taken. Whatever is taken from an enemy by a land force, without the aid of ships, is booty; on the other hand, whatever is taken from an enemy by the crews of ships (part of which may often consist of regular troops) is prize, whether taken at land, in harbours, or at sea. The prize act and the proclamation do not merely authorize the seizing of all ships and vessels, but all goods of the enemy, without any distinction, whether these goods are found at sea or on land, and the whole is described as prize.

Agreeable to this distinction, when an expedition has been sent out to attack any strong fortified place, which required, not only ships, but a strong regular land force, to be landed, and to act as a separate army on shore, all the effects at land taken in such places, could not be considered as *prize*, but as *booty*, because it could not be

If a privateer shall hereafter be assisted in taking any fortress by a single man on shore, not of their crew, or even by a single deserter from the enemy, the whole prize will, I apprehend, by the late determination, belong to the crown, on account of *co-operation*.

be taken by the crews of the ships alone, for the soldiers after being landed and formed into a distinct army, could no longer be held to be a part of the crews of the ships, but must of course have been struck off the ship's books, and ceased to be any longer under the command or direction of the naval commander, and on the other hand, as such capture could not be made by the sole exertions of the army alone, it has been the practice, on some occasions of that sort, to make a special grant of such *booty* to the navy and army, which his Majesty was entitled to make, because such *booty*, as not including ships, was not within the meaning and intention of the prize act.*

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* The only two instances of such special grants, prior to the present case, which I have been able to hear of, were, 1st. In the case of Sir Hovenden Walker's expedition against Louisbourg, when Mr. St. John was secretary of state, but as the expedition failed, no question arose upon it. The other instance was in the case of the expedition against the Havannah, when, as it happened, no ships were taken by the navy, but some were surrendered along with the town. Such grants were thought so likely to occasion jealousy to the navy, and to be productive of disputes, that ministers have, in general, been

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IN the present case, the secret instructions delivered to *Commodore Johnstone* and *General Medows*, contained the following clause : “ In order to prevent any contests
 “ or disputes, that might otherwise arise,
 “ concerning the distribution of such *booty*,
 “ as shall be gained from the enemy by the
 “ *joint operations* of our army and navy at the
 “ *attack of the Cape of Good Hope*, we are
 “ pleased

been very cautious of granting them, although expeditions of that sort have often been sent out.

The earl of Sandwich was examined as a witness in this cause ; his lordship was at the head of the admiralty, and one of the Cabinet council, when this expedition was sent out, and when the secret instructions were prepared. He deposed,
 “ That the principal objects of the expedition were, an attack
 “ upon the *Cape of Good Hope*, and the conveyance of a re-
 “ inforcement to the *East Indies*, and not upon any cruising
 “ service, otherwise than he apprehends, it was the duty of
 “ the commander of the said squadron, agreeable to his in-
 “ structions, to take and destroy, such of the ships and ves-
 “ sels belonging to his Majesty’s enemies, as he might meet
 “ with, and have an opportunity of destroying, in proceed-
 “ ing to the place of his destination ; and that he believes,
 “ the distribution of prizes, taken at sea by any of his Ma-
 “ jesty’s ships, is settled by law to belong to his Majesty’s
 “ navy, and the persons being in his Majesty’s pay, and ser-
 “ vice, and actually on board the ships by which such cap-
 “ tures are made, but the deponent says, he means to give
 “ the circumstances last mentioned, as matter of opinion only.”

“ pleased to direct that all such *booty* shall
 “ be divided between our land and sea forces
 “ into two shares, according to the num-
 “ bers mustered in each service, that the
 “ share which falls to the sea service, shall
 “ be divided according to the regulations
 “ established in our navy, and that out of
 “ the share, which falls to our land-forces,
 “ our Commander in Chief of the said
 “ land-forces, shall be entitled to a divisi-
 “ on, equally, in proportion to that share,
 “ with what falls to the Commander in
 “ Chief of the sea forces, in proportion to
 “ the share so falling to the navy. The
 “ remainder to be distributed to the officers
 “ and men, in proportion to their respective
 “ pay.”

Before the expedition failed, it was ascer-
 tained authentically, that the troops while
 on board, and until they should be landed
 and struck off the ships books, and formed
 on shore, as a separate distinct army, should
 be under the direction of the Commander of
 the fleet, and subject to naval martial law,
 for a communication was made to *Commodore*
Johnstone, by a letter from the Secretary of

the Admiralty, 22d Feb. 1781, by command of their Lordships, “ that the troops, “ and every person embarked on board his “ Majesty’s ships of war, or armed transports, must, during their continuance “ there, be subject to naval martial law.” And a similar communication was made to *General Medows*.

By the same secret instructions, particular ships of the Squadron, were directed to be sent to the *East Indies*, after the success or failure of the enterprize, and in case of a failure, part of the troops were also to be sent there, and the remainder to be sent to the *Leeward Islands*; *General Medows* was either to return to *England*, or proceed to the *Leeward Islands*, as he should think best for the service, and it was particularly directed, that the attempt upon the *Cape* should not be made, unless (in consequence of the intelligence which they were directed to procure) such attempt should seem advisable in the opinion of *both* the Commodore and of the General, but if they *both* agreed, they were directed without loss of time “ to “ concert the necessary measures for carrying
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“ ing the same into immediate execution,
 “ and exert their utmost endeavours to take
 “ the *Cape of Good Hope* with all its defences,
 “ fortifications, and works thereunto belonging.”
 No mention is made in these joint instructions of any ships or vessels of the enemy.

Matters being thus settled and explained, the squadron sailed in *March* 1781. They put into *Port Praya* in *April*, where they were overtaken by a squadron of *French* ships of superior force, under *Monsieur Suffrein*, who attacked them in the Neutral harbour, but was repulsed. The squadron afterwards sailed for the *Cape*, but having many *East India* ships under convoy, they were not able to reach the *Cape*, so soon as *Monsieur Suffrein*, who separated from his convoy, and sailed, with his ships of war, directly for the *Cape*

It appears, that early in *June*, the Commodore suspected that *Monsieur Suffrein* would arrive at the *Cape* before him, and some letters passed between him and *General Meadows*, concerning the most prudent measures to be pursued, and particularly as to

the best place from which the attack of the *Cape*, could, in that event, be made, as to which they differed in opinion.

They had not then received intelligence of any prizes in *Saldabna Bay*, but the Commodore, so early as at that time was, of opinion, for the reasons which he assigned, that they ought to go directly to that Bay, *General Medows* thought otherwise.

On the 12th *June*, the Commodore detached part of his squadron to precede the fleet, and gain intelligence, giving them a rendezvous, and those ships carried with them, part of the troops.

On the 4th of *July*, the detachment fell in with, and took, a Dutch East Indiaman, called the *Helterwoltemade*, which had left *Saldabna Bay* a few days before. This ship was afterwards condemned as prize to his Majesty's navy, including the troops as part of the crew, *without any claim being made by the army to a distinct and separate share.*

By means of this capture, intelligence was received on the 9th of *July*, when the detachment

detachment arrived at the place of rendezvous, that M. *Suffrein* had arrived at the *Cape*, and was then lying in *Falsebay*, with all his men of war, and that he had reinforced the garrison with 500 men, 80 or 90 of whom were artillery-men. Intelligence was also received, that *five* large *Dutch East-India* ships richly laden, and homeward bound, were lying in *Saldahna Bay*, without being defended by any fortifications. By the same means a particular and detailed account was received, of the disaster which had happened in the *East-Indies*, by the formidable invasion of *Hyder Ally*, and the defeat of *Colonel Bayley*.

These different heads of intelligence, occasioned much reflection and frequent deliberations of the two commanders; they did not entirely agree in opinion, and they committed their thoughts to writing, in the several annexed letters which passed between them, which were produced in evidence in the Court of Admiralty, and were printed in the appendix to the cases given in to the commissioners of appeal. Nothing can exhibit a greater degree of military ability,

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elevation of character, and distinguished zeal for the public service, than is to be found in these letters, and accordingly, the commissioners of appeal, expressed the highest approbation of the conduct and sentiments of the two commanding officers.

The points to be considered, were, whether it was practicable, supposing the intelligence certain, to proceed to the attack of the *Cape*, and if it was, in what mode, it was best, to conduct the attack: on the other hand, if it was not practicable, whether it would be proper, in consequence of the intelligence of *Colonel Bayley's* defeat, to deviate from their instructions, and instead of sending only a part of the troops to the *East Indies*, they should send the whole. Another point was, whether they should at all events previously endeavour to take or destroy the *Dutch* ships in *Saldanha Bay*.

The difference of opinion arose, upon the following points: *Commodore Johnstone* seems to have thought, that notwithstanding the arrival of *M. Suffrein*, it was still possible to succeed in the enterprize against the *Cape* of
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Good Hope, as the transports with the *French* troops were not arrived. Secondly, he thought, that the attack could best be made, by landing at *Saldabna Bay*, and marching about 42 miles from thence, to the Forts of the *Cape*. Thirdly, he thought, that at all events, it was proper to take or destroy the 5 *Dutch East Indiamen*, as a most important national service, and an opportunity which ought not to be lost.

General Medows, on the other hand, thought, the attempt upon the *Cape* impracticable, after the arrival of *M. Suffrein*. Secondly, that at any rate it was too hazardous to make the attack by landing at *Saldabna Bay*, on account of several military difficulties which he stated; and Thirdly, he was against the measure of going with the squadron and convoy, to attack the *Dutch East Indiamen* in *Saldabna Bay*, said it was a false move, and desired to throw the responsibility of it upon the *Commodore*.

They agreed, however, in thinking it their duty to deviate from their instructions, by sending immediately to the *East-Indies*
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the whole of the troops, to repair the loss occasioned by *Colonel Bayley's* defeat: and to this spirited determination of theirs, and the dispatch with which the ships and troops were sent away, the preservation of the *Carnatic* and perhaps of *India*, may be ascribed, for it happened, that the ships arrived at *Madras*, just in time to reinforce *Admiral Hughes*, when the Superior *French* fleet, under *M. Suffrein*, were on the point of attacking him, and with that reinforcement, *Admiral Hughes* was no more than equal to the *French* force. The arrival of the troops, was also, at that moment, of the greatest importance. For by the Commodore's precaution, the ships and troops were directed first to touch at *Bombay*, where *Admiral Hughes*, as he expected, would be to refit, and by means of part of these troops, which were left there, the Government at *Bombay* were enabled to form the attacks under *Humberstone*, *Macleod*, *Matthews* and *Campbell*, from that side of the *Peninsula*, by which *Hyder Ally* and his son *Tippoo Saib* were compelled to abandon the *Carnatic*; and that fortunate stroke, may in truth be said to have been the measure, which saved *India*.

dia. Indeed the governor-general and council in their public dispatches, impute the saving the *Carnatic* to the troops which were thus sent from the *Cape* to their assistance.*

General Medows proposed, that the troops and ships intended for the *East-Indies*, should immediately depart, and that if the *Commodore* afterwards, with the remaining ships should chuse to go into *Saldahna Bay*, in order to take or destroy the *Dutch East-Indiamen*, “ he should think it a spirited enterprize, in which *he not only expected*, but sincerely wished him success.”

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* The *Commodore* had another piece of merit in the precautions, which he took to succour India. When he arrived from the *Cape* at *St. Helena*, he found there his Majesty's ship *Hannibal*, which had arrived at *St. Helena* after the *East India* fleet had sailed. The *Commodore* might have brought the *Hannibal* to *England* as an additional guard to the *Dutch* prizes ; but being actuated by public views, he immediately dispatched the *Hannibal* to *India*. Unluckily she fell in with the *French* fleet, but before she was taken, the whole of the *French* squadron were carried in pursuit of her, two days out of their course, which loss of time proved to be of the utmost consequence, as it just gave time to the reinforcement from the *Cape* to join *Sir Edward Hughes*, at a critical moment, when the *French* fleet were ready to attack him.

The Commodore on the other hand, contended, that it was altogether unsafe, to separate and divide his squadron, before going into *Saldahna Bay*, not that there was any difficulty in taking or destroying the *Dutch East-Indiamen*, with a much smaller force (for *General Medows* was of opinion, that after sending off to *India*, the one half of his ships and all the troops, the remainder was sufficient for that enterprize, and in the Commodore's public orders, for the attack of the *Dutch East-Indiamen*, printed in the cause, he says, "It is supposed the first line of battle ship, will silence the guns of the *Dutch East-India* ships, and therefore the chief object will be, to cut off their people from landing, so that they may not fire their ships.") but he objected to it, because, by the separation, which *M. Suffrein* must soon know of from *Saldahna Bay*, there would be the greatest risque of *M. Suffrein's* following the convoy sent to *India*, and cutting them off, at one or other of the two places, where they must touch for water. The Commodore's opinion on this head, is expressed in his letters to *General Medows*, of the 17th and 18th of *July*, in the following

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ing words. In his letter of the 17th of *July*, he says, “ My own opinion is, that we ought to go to *Saldahna Bay* with our “ *whole force*, and take or destroy the five “ Dutch East Indiamen, which is an object “ of the utmost national consequence, and “ an opportunity which ought not to be “ lost.” And in his letter next day, the 18th of *July*, he explains himself more fully in these words, “ When we attack the “ East-India ships in *Saldahna Bay*, M. *Suf-* “ *frein* must hear of our separation. He “ must then know the *Cape* is safe, he “ must also know, you must touch at *St.* “ *Augustine’s Bay* or *Johanna Bay* for water, “ he can then visit both places, and make “ sure of meeting you, at the one or the “ other. Supposing such an event, it would “ be worse than the defeat of *Bayley*.”

It must occur to every one, that nothing could exceed the disinterested sentiments, which influenced both of these brave officers, in this dispute. General *Medows* wished to separate from the squadron, before attempting to capture or destroy the *Dutch* prizes, and if at that time he entertained an
 opinion,

opinion, that by the King's instructions, he would be entitled to an equal share with the *Commodore*, in these prizes, if taken and not destroyed, nothing could more strongly manifest a proper disregard of personal considerations, when put in competition, with what he judged of importance to the public service; and at any rate, he could not be ignorant, that supposing the prizes to belong solely to the navy, he and the troops were entitled, under the act of parliament, to share with the navy as part of the crews, and borne on the ship's books, though not so largely, with regard to himself personally, as under the instructions. * On the other hand

* From a paragraph in the *Commodore's* letter of the 18th July, it appears, that before intelligence was received of the disaster in India, the army had pressed with impatience, though contrary to the instructions, to be all dispatched to India, without making any attempt on the Cape, founded no doubt on the probability that M. Suffrein would arrive at the Cape with his men of war before them. This wish of the army which corresponded with the usual wish of soldiers, to go to a country where not only laurels, but emolument have sometimes been reaped, the *Commodore* appears to have opposed till he learnt the defeat of Colonel Bayley. The words of his letter are, "As much as I opposed that idea before (meaning " the idea of sending on the whole troops to India) as eagerly
" do

hand, the Commodore wished, to make the attack before any separation, because he thought, the detachment to *India*, might otherwise run the greatest risque, of being cut off by *M. Suffrein*, although the presence of the troops, and of all the ships (which were unnecessary for attaining the object) might involve him in disputes concerning the amount of his share of the prize money. But no considerations, except what concerned the public service, appear to have existed in either of their minds.

That they were both actuated, by the most noble and honorable sentiments, was also proved, by a circumstance, which happened

“ do I embrace it now, nor do I find any inconsistency or
 “ weakness of Judgment in that conduct, because the event
 “ which has occasioned my change of opinion, was totally
 “ unforeseen, and beyond all probability at that time, and
 “ seems after all to have depended on an accident, in the blowing up of some tumbrils during the battle ; whereas the
 “ arguments which were adduced before, were fully known
 “ to the King’s Ministers, when they gave us our orders to
 “ the contrary,

“ But the loss is now immense, and the loss of reputation
 “ is hardly to be recovered : I fear it may prove a second
 “ Pultowa.”

pened after the prizes were taken ; for disputes arose in the fleet, as to the question, whether the army would be entitled to a larger and separate share of the prizes, as if these, (though ships were no where mentioned) were to be considered, in the same light, as *Booty* taken at the *Cape of Good Hope*, or whether the army could only be entitled to share, as part of the crews of the respective ships. A good deal of heat took place. The Commodore, thinking, as he afterwards expressed himself, that it would be unbecoming in him, to have any dispute with the General, upon a subject of that kind, which might lead to general animosities, between the fleet and army, and where interested motives might be imputed, as the cause of the difference, resolved at once, to put an end to it, by taking side with the army, and declared, that he thought them entitled to a larger and separate share. He went farther, for he wrote a letter to *General Medows*, in the following words:

“ *Romney, July, 27, 1781.* Dear General,
 “ I am sorry to hear, there is a likelihood
 “ of disputes and litigations, concerning
 “ the sharing of the produce of the ships
 “ we

“ we took in *Saldahna Bay*. This I can af-
 “ sure you of, that there shall be no dis-
 “ pute between you and me, on this subject.
 “ I now declare in writing, what I said by
 “ word of mouth, that I am of opinion,
 “ the army are entitled to share, *according*
 “ *to the King's instructions*. It does not be-
 “ come me, to prejudice my own corps,
 “ nor would it be prudent to irritate them,
 “ and therefore I shall rest satisfied, with
 “ giving my poor opinion, and doing what
 “ I think right myself, without further in-
 “ terference, leaving the rest to more in-
 “ fallible judges. I am, &c.

When the navy afterwards insisted, in
 the court of admiralty, that the troops
 could only share, as part of the crews, the
 Commodore again acquainted *General Me-*
dows, that he would direct the agent for
 the prizes to pay the General, out of that
 share of the prizes which should be allotted
 to the Commodore, whatever sum the Ge-
 neral should claim as his right, but the Ge-
 neral as nobly declined the proposal, and
 said, the Commodore's offer was very hand-
 some, but unless the money was found due

to him, by the sentence of a proper court, he would not accept of it.

After the discussion already stated, with *General Medows*, concerning the propriety of attacking the Dutch ships, before a separation, the Commodore took the responsibility upon himself, and determined to go into *Saldahna Bay*. On the 20th of *July* he issued his public orders, for the attack, which was to be made next day, in which, so far as concerns the troops, he mentions, that the *Lark* was to carry 50 troops, and the *Jason* 100, which they were to land as speedily as possible, in the N. E. part of *Hotties Bay*. That these troops, would have orders, to march to the look out on the bluff, on the north part of the harbour, to prevent the enemy from landing out of their ships, and thereby intimidate them from setting theirs on fire, and also to seize such of the enemy, as they could lay hold of. That the *Diana* frigate and *Royal Charlotte* should anchor in *Bevan's Bay*, where they were to push on shore a party, to secure the guard or look-out house, with a two gun battery, and immediately march round, to
join

join those troops, who were to land, from the *Lark* and *Jason* in *Holties Bay*. That a strong detachment, must be sent up *Riot-Creek*, to seize the post house * and any of the people there, and what cattle they could, for which purpose, the *Pondicherry* and *Resolution*, were to anchor near the said creek, on the N. E. part thereof. These orders add, “ It is supposed, that the first line of
 “ battle ship, will silence the guns of the
 “ Dutch East-India ships, and therefore,
 “ the chief object will be, to cut off their
 “ people from landing, so that they may not
 “ fire their ships, and for us not to run too
 “ near each other, in following up to the
 “ attack; or sailing up into the harbour,
 “ in a manner so as to occasion any confusion.”

General Meadows, had on the 13th of *July*, given orders to the troops to hold themselves in readiness, and gave particular orders to the light infantry and grenadiers on board the *Pondicherry* and on board the *Royal*

* This Bay lay 25 miles distant from the prizes, and in a different direction.

Charlotte, to dress two days provisions, and to have one day's rum mixed, and that the troops which should land, should take with them one camp kettle for each mess, and their canteens. To these general orders, dated the 13th, he only added on the 20th of *July*, the following order; " The troops " on board the *Eagle* and *Porpoise* to receive " orders from *Major Campbell*, of the 100th " regiment." *General Medows*, however, as an able and experienced officer, gave every necessary instruction to the several officers, who were to command the different detachments of troops, and furnished them with plans of the bay. He himself remained in the *Romney* with the *Commodore*.

On the 21st of *July*, in the morning, the squadron approached *Saldanha Bay*. The weather was foggy—The *Jason* and *Active* were directed to look out for the entrance of the Bay, and soon made a signal that they had found it, but I am informed that the *Jason* and *Lark* after discovering the entrance, instead of leading in, according to signal, wore ship, and laid their heads from the shore; and afterwards gave as a reason, that
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the Dutch Captain of the *Helterwoltmade*, had refused to pilot them in.—This was a critical moment.—The Commodore knew by his intelligence, that the Dutch ships in the Bay, were apprized that an English fleet was expected, and had orders from the *Cape*, to burn their ships the moment the English appeared. If there had been the least delay in entering the harbour, the prizes must have been burnt. The masts of the Dutch ships were already seen within the Bay.—The Commodore with his usual decision, did not hesitate a moment—he ordered all possible sail to be made in the *Romney*, and pushed into the Bay. But as it was necessary to turn by traverses into it, he took the pilotage upon himself, and his was the first ship that entered. The *Jason* and *Lark* followed, and then the *Jupiter*. By the rapidity with which this was performed; the Dutch had only time to cut their cables, to loose their fore-top sails, which had been kept bent for the purpose, and to run their ships on shore, having set them on fire, as the *Romney* dropt anchor.—As this circumstance of their being determined to set fire to their ships, had been

foreseen, and every preparation for extinguishing the flames had previously been made, the boats of the fleet with the utmost rapidity, boarded the Dutch ships, and the flames in all of them, tho' next to a miracle, were soon extinguished, except on board the *Middleburg*, which was the Dutch Admiral's ship, she burnt with incredible fury, and becoming light as she consumed, she got afloat, her masts fell, and she had nearly drifted on board two of the other prizes. The Commodore led the way, in one of the boats, and made haste towards her, being determined to tow her off stern foremast.

It is well known, the quantity of powder, which the Dutch ships, and particularly the admiral's ship, always carry, and that it is placed abaft. There was the utmost hazard of her blowing up, and in that case, all the boats near to her must have perished.* He soon

* I have heard the Commodore say, that he considered this, as the most hazardous enterprize, in which he was ever engaged; but it appears to me, that his situation was yet more hazardous, though somewhat similar, when at the attack of Port Louis, with Captain David Brodie of the *Canterbury*, he boarded a fire-ship, and made fast a chain, by which the fire-ship was towed off, and his Majesty's ships were saved.

soon approached her, and fixed a grapple, many other boats followed and assisted in towing, and *General Medows*, afterwards in one of the long boats joined them—She was by great exertion towed off to the south point of *Hotties Bay*, where she blew up, splitting her upper works into ten thousand pieces, within ten minutes after the boats left her.*

The troops on board the *Jason* and *Lark*, had no occasion to land. The troops on board the *Royal Charlotte* and *Diana*, were prevented from getting up to *Bevan's Bay*, and from landing their troops, till some hours after the Dutch ships had struck their colours, they then marched to the Point, where the two guns battery were placed, and found them abandoned; they then marched round *Hotties Bay* to the northward, where they found some studding sails, which the Dutch had used as tents, but the Dutch sailors had long before made their escape.

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* The boats were at last so many, that they reached almost three quarters of a mile; but those of the boats which assisted at some distance from the burning ship, were at no time in danger.

The troops sent in the *Pondicherry* and *Resolution*, Southward to *Riot Creek*, also landed, but not till the Dutch ships had struck their colours. They marched in quite a different direction from the prizes, towards the Post-house, about 25 miles distant from *Hotties Bay*, an officer and twenty men were detached, who found the Post-house abandoned and set on fire, the Dutch guard having crossed over the *Lagoon* in a boat. They found two guns, took one prisoner, and seized some cattle

The Dutch had put most of their sails on board a Hooker, which they had stationed beyond *Shapen Island*, in hopes they might escape the enemy, but the Commodore in consequence of the intelligence he had obtained, had, in his disposition for the attack, directed the *Rattlesnake* as soon as she entered the Bay to proceed to secure the Hooker, which was accordingly done by surprise, and all the sails found on board.

It was now necessary to use every possible dispatch to put the Dutch ships in condition to sail, and to prepare every thing for dispatching

patching to the *East Indies* part of the squadron and all the troops. Excellent water was found in *Saldanha Bay*, near the Post-house, contrary to the intelligence which the crew of the *Heltewoltmade* had given; but it was so distant, and would have taken so much time, to water the fleet, that only a small quantity was taken in, and about 60 hogshheads taken from the *Hooker*. Before midnight of the 21st *July*, all the prizes were got afloat, and the next day they were all rigged and ready for sea.

Some time was taken up afterwards in arranging with the utmost dispatch the many things necessary for a separation, which could not have been done with propriety, except in a harbour, for at that time of the year, on a coast noted at that season for tempestuous weather, it was impossible to lye to, with such a fleet. At last on the 24th *July*, at mid-day, the whole squadron proceeded to sea. The Commodore then dispatched the prizes to *St. Helena*, without a convoy, that he might accompany the detachment for *India*, with his whole force. He attended them beyond the *Cape* to the fourth degree of longitude

gitude, when he thought all risk of their being intercepted by *Monfieur Suffrein* at an end. He then failed for *St. Helena*—but was reduced to one quart of water a day per man, before he could get back. Two of the prizes were afterwards lost in their way to *England*, and only the *Hoogskarpel* and *Pearl* arrived safe.

Proceedings in the Admiralty court were commenced, for the condemnation of these two ships, as prizes, and on the 4th Sept. 1782, they were condemned as good and lawful prize, generally, reserving the question who were the captors.

A claim was put in for the army, insisting that they were entitled, under the King's instructions concerning *booty* at the *Cape*, to a separate, and as to the officers, a larger share, than would belong to them under the prize act, as part of the crews of the ships, and as borne on the ship's books at the time of the capture.*

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* The share of the soldiers who were borne on the books of the squadron, will be greater, if the whole shall be condemned

On the 28th May 1785, the Judge of the High Court of Admiralty, (*Sir James Marriott*) pronounced “ for the interest of the “ army, agreeable to the spirit of his Majesty’s instructions, to be distributed according to the directions of his Majesty’s “ instructions.”

By this determination, a part at least, of the prizes, were decreed to the navy, and the agents for the prizes, with the approbation of the Advocate General, and the Advocate for the Admiralty, who were counsel for the navy in the cause, distributed that share which was unquestioned, to the officers, seamen, and marines of the fleet.

But the navy being dissatisfied with the decree, in so far as it gave a separate and larger share to the troops, were advised to appeal, to the Commissioners appointed to hear and determine appeals in causes of prize.

to the navy, than if the distributions were made upon the footing of the instructions; but the officers, and particularly General Medows, will receive a much larger share under the instructions.

prize. An appeal was accordingly entered with regard to the *Hoogskarpel*, it being agreed, that the *Pearl* should abide the fate of that appeal.

On the 21st *March*, 1785, and on several preceding days, the cause was heard before the Commissioners of Appeals; when they were pleased to decree a monition, against the Advocate General, and Procurator General, and also against the Advocate and Procurator General, in the office of Admiralty, to appear on the 23d of the same month, for the interest of his Majesty.—The Procurator General, and the Procurator in the office of Admiralty appeared accordingly.

The cause was again argued, on the 29th and 30th *June*, upon the new question concerning the right of the Crown, when the Commissioners pronounced a decree, by which, “ They reversed (or rather annulled) the decree appealed from, and pronounced the ship *Hoogskarpel*, to have been taken by the conjoint operation of his Majesty’s ships and vessels under the
“ com-

“ command of *Commodore Johnstone*, and
 “ the army under the command of *General*
 “ *Medows*, and condemned the same as
 “ good and lawful prize to his Majesty.”

The principle upon which this decree proceeded, as explained in a speech of *Lord Camden*, was, first, that the capture did not fall under the King's instructions, for it was not an attack on the *Cape of Good Hope*, and secondly, that it did not fall under the prize act, because it was not a capture by his Majesty's ships alone, but was made by the ships and by a separate army co-operating together, and being neither granted away by the prize act, nor by the instructions, it belonged to his Majesty's *jure coronæ*.

The Commissioners in this decree, took up entirely new ground, and though only a Court of appeal, they brought forward of themselves, and determined upon a question in favour of the Crown, which had never been agitated in the court below. It never entered the imagination of any of his Majesty's law servants, though of long experience in the Court of Admiralty, and engaged

ed as Counsel in the cause, that his Majesty had a right to these prizes *jure coronæ*.—Both navy and army were thus deprived of what they deemed their right, and of what had been decreed to them by the Judge of the Admiralty, and as the idea of his Majesty's right, had been for the first time suggested by the Commissioners of Appeal, the parties were deprived of the opportunity, as in all other cases, of having the question discussed before two different courts.

A petition to his Majesty was thought proper, in this very extraordinary case, praying a commission to issue under the great Seal, to such persons as his Majesty should deem meet, to review, rehear and determine the merits of the appeal, which petition has been presented on the part of the navy, but the fate of it has not yet been determined. It is not indeed a matter of course to grant such commissions of review, and they are matters of favour, and have been often refused, but it is not to be supposed, that in a question which involves the interests of the navy and army, and gives a new construction to the prize act, especially
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when the determination is in favour of the Crown, that his Majesty will be advised to reject the prayer of this petition.

I shall now endeavour to state, as shortly and accurately as I can, the arguments which have been used, in support of this decree, and the answers made to them on the part of the navy.

In order to show, that this case did not fall under the King's instructions, it was argued that *Saldanha Bay*, though within the the jurisdiction and limits of the *Cape of Good Hope*, which is said to extend many hundred miles northwards, yet was certainly not the object of the instructions. That it appeared by the evidence, that this bay was more than 40 miles, by the nearest road over land, distant from the *Cape*, and more than 60 miles by sea, that the adjoining country, was in a state of nature, and without cultivation, nor was the bay defended by any fortification, but was merely an open bay, and as the bay itself, could not be the object of the expedition, much less could the Dutch East-Indiamen, homeward-bound, be within

within the view of the instructions, for it could not be foreseen, that any ships whatever would be found in that place. That neither could the attack on these Dutch Indiamen, be considered, as having any relation to an attack upon the *Cape*, because it appeared by the evidence, that the object of entering the bay, was merely to attack the Dutch ships, and to get further intelligence, and that *General Meadows*, without whose concurrence no attack on the *Cape* could be made, had repeatedly declared his opinion, that an attack on the *Cape*, by landing at *Saldabna Bay*, and marching from thence, was a service which he would not undertake, even if he had a much larger number of more veteran troops, than were then under his command; and that the Commodore, two or three days before entering the bay, had promised the General as a man of honour, that he would not press the subject any further, after getting into the bay, but would leave it entirely to the General, to do as he pleased, on his own judgement, according to any other intelligence or information they might receive; and at any rate, even if it had been the intention, to land in *Saldabna*

dabna Bay, and to march from thence to the *Cape*, the capture of ships there, in an open bay, so distant from the *Cape*, could no more be considered as an attack upon the *Cape*, than if they had landed two or three hundred miles distant, and had marched from thence by land, and that it was therefore immaterial to consider, whether or not, all thoughts of attacking the *Cape*, had been entirely given up, before entering *Saldabna Bay*, or whether the idea of such attack, was only conditionally given up, in case no intelligence should be obtained in *Saldhana Bay*, to encourage such a measure.

That this capture, therefore did not fall within the spirit of the instructions, which certainly could have no view, to any events which might arise in the course of proceeding towards the great object of the expedition, but solely related to the capture of “ *the Cape of Good Hope, with all the defences, fortifications, and works thereunto belonging,*” which are the words used in the secret instructions, and if the spirit of the instructions did not extend to the case in

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question,

question, the judge of the admiralty did wrong in pronouncing, “ for the interest
“ of the army agreeable to the spirit of the
“ instructions.”

But that another question remained, whether on the one hand this case fell under the prize act, and was to be considered as a capture by his Majesty's ships and vessels, together with the troops as part of the crews, and to be distributed agreeable to his Majesty's proclamation ; or whether on the other hand, it was a capture, by two distinct and separate powers, the navy and army co-operating together ; and if to be considered in that light, it was contended, that it was not a case within the words or intention of the act of parliament, but that the prizes still belonged to his Majesty in right of his crown, undisposed of and not granted to captors of that description, because the act gives
“ to the officers and seamen, marines *and*
“ *soldiers* of every ship or vessel in his Majesty's pay, the sole interest and property
“ in all and every ship, vessel, goods and
“ merchandize *which they shall seize and take,*”
but in order to bring them within the grant
made

made by the act, they must, it was said, be *the sole takers*, and that here, if the army is to be considered as a separate and distinct body, the ships under the Commodore's command, were not the sole takers.

To prove, that the army was in this case to be considered as a separate and distinct body, and not as a part of the crews of the ships, it was observed, that here was a complete and regular army, sent out for a particular service; under the command of a general officer, intended to act on shore, for the regular attack of a fortified place; they were not therefore to be considered as marines, or as soldiers occasionally embarked, to be transported and landed at a particular place, but as a complete land army, intended to become on land, a distinct, independent, unconnected body of men, not afterwards subject to the orders, or under the controul of the naval commander.

That it would be highly unjust, that such a body, co-operating with his Majesty's ships as a separate corps, should be entitled to nothing, and that the prize act could not

intend any thing so unfair ; or if it did, no seaman could stand up and oppose a new law, to remedy the injustice. That it was therefore reasonable and equitable to interpret the grant of the crown, made by the proclamation and prize act, in such a manner, as to leave the prizes in question undisposed of, that so his Majesty might have the power of distributing the amount in an equitable manner, to the Navy and Army as two distinct bodies, who had co-operated in the capture.

That not only were the troops in this case, a distinct army, but in the actual enterprize, they acted as a distinct and separate body on land, and the whole plan of attack was settled and concerted between the Commodore and the General. They had deliberated upon the propriety of making it ; they had arranged the number of troops to be landed, and the places on shore where each division was to act. Part of the troops were landed, and though it may be doubted from the evidence, whether any of them were actually on shore, before the Dutch ships struck their colours, or that they really contributed

ted to the capture, yet they were ready to have assisted, if the occasion had required it, and that the troops on board the *Lark* and *Jason*, would, in all probability have actually landed, before the capture of the ships, if the Commodore had not, contrary to the original plan, pushed suddenly into the bay, before them ; but this could not deprive them of the right they acquired by having been ready to co-operate, if they had not been so prevented by the Commodore.

That whenever, by consent or otherwise, two corps, one at land, and the other at sea, do jointly proceed to attain one common object, and each uses his utmost endeavours towards it ; this must be considered as a *joint operation* ; that this was the present case, for the operation was concerted between the two Commanders, and each corps used its utmost endeavours to obtain the end ; that the Commodore by his letter of 17th *July*, declared his opinion to be, that they ought to go to *Saldahna Bay*, with their whole force, and take or destroy the five Dutch ships, and general *Medows* answered, that he should with the greatest pleasure assist in the execu-

tion of the scheme at *Saldahna Bay*, where he heartily hoped *their joint endeavours*, their vigour and expedition, would be crowned with success, and therefore it appeared, that both parties at this time considered the measure as a joint operation ; and the Commodore in particular thought the *whole force* necessary to accomplish it. The plans concerted, the orders afterwards given, fixing what troops should be landed, and what should not, proved clearly, that in the idea and intention of all parties, this was meant to be a *joint operation*. And in the execution of the plan, each body used their utmost endeavours, although the Dutch ships were run aground and taken, before perhaps any, or hardly, any of the troops were landed, yet that was not the fault of the general, or of the army, but was owing to the Commodore himself, who varied his original plan, by pushing first into the bay ; but in all cases, where there is a joint plan of operations between two corps or distinct bodies, and when that plan is carried to the utmost of the party's endeavours into execution, it is not the coming up of this or that corps in particular, or the failing faster or slower of this or that

that ship, that will deprive the parties of their actual merit, or of the reward they are entitled to, for their best endeavours.

That the moment the troops set foot on land, they were no longer to be considered as marines, or as part of the ships' crews ; they were a distinct corps, commanded by their own officers, and were as independent of the navy, as if they had never been on board at all. The Commodore it was said had no power to order the troops, or any part of them to land, for any service whatever ; they were solely under the command of General *Medows*, who was not under the command of the commodore, and without whose orders the troops were not obliged to take any step or measure ; and that therefore the operations of the troops are to be considered as those of a distinct and separate body, co-operating with the ships, which circumstance took this capture entirely out of the provisions of the prize act.

That the commodore himself was of opinion, (as appeared by his letter) that this

was not to be considered as a capture by the crews of the ships alone, including the troops, but that the army were entitled to a distinct and separate share, according to the King's instructions. In this indeed the commodore was mistaken, for the instructions do not apply to the case, but it shews that he considered the army in this enterprize, as a distinct and separate corps.

This is the substance of the argument, in support of the decree, and the argument in support of the right of the navy may be stated in the following manner,

That so far as the argument already stated tends to shew, that this case did not fall either within the letter, or the spirit of the King's instructions, the navy claimants entirely agree to the force of the reasoning, and although it was upon that ground solely, that the Judge of the Admiralty decided for the army, and upon which alone the army founded their claim ; yet it always appeared to the navy as totally ill founded, and for that reason the original appeal was brought by the navy. They conceived that
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the instructions so far as concerned *booty*, were confined to the single object of the capture of the *Cape of Good Hope*, and that it would be as easy to suppose, that the spirit of the instructions extended to the case of a capture of ships, in the course of the voyage, in the open sea, merely because there was an army on board, as that it extended to the attack of the Dutch ships in *Saldahna Bay*. The prize act provides for the case of soldiers who are on board his Majesty's ships, when prizes are made, as *soldiers* are particularly named amongst those who are entitled to share. They are not considered as a distinct force, but as part of the ship's crews; and accordingly in this very case, the Dutch ship *Helswoltemade*, which was taken by a detachment of the squadron, having part of the troops on board, was condemned solely to the navy, including the soldiers who were present at the capture, and no idea was ever entertained, that by the spirit of the King's instructions, that part of the army, was entitled to claim a separate and larger share, as a distinct co-operating body.

The argument on the other question, whether, supposing that this case does not fall within

within the King's instructions, it is comprehended under the grant by the prize act, is that which the navy think it most particularly necessary to combat, because upon that the decree of the commissioners was founded.

That argument proceeds upon several suppositions, every one of which seems totally ill founded.

1st. It supposes that as the army cannot claim under the instructions, they would get no share whatever of the prizes, if condemned to the navy; and upon this false idea, much stress was laid, to shew the injustice of not rewarding the army for the share they had in the enterprize, as having cooperated in forming the plan, and as having been ordered to land, and having actually landed, though delayed without their fault, and as having been ready to give assistance if it had been necessary; and cases were put where it might happen, that the capture was, in truth, entirely owing to the army, and yet it was asked, would it be fair, or just, or equitable, that the navy should put in their pocket, the reward of other men's merit and services.

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The fact is, that whenever troops are present at a capture, *and are borne on the ship's books*, they are entitled under the prize act, to a share. It is often necessary, when troops are not on board, to land a part of the crews, whether marines or seamen, to make prizes in creeks or harbours, but their going on shore for that purpose, does not make them cease to be part of the crews of the ships, nor are their names struck off the ship's books, and they continue notwithstanding their having landed, to be entitled to a share of the prize. If troops are on board, and landed for the same purpose, with or without seamen, they continue also on the ship's books, and are entitled to their share, whether by so landing, they gave any material assistance in the capture or not.

2dly. It is erroneously supposed, that the troops or army embarked in this case, were not under the command of the commodore of the squadron, and that he could not order them to land. This mistake has proceeded from confounding the landing of the army, for the purpose of the expedition, (in which case they would have been struck off the ship's

ship's books, and would have constituted a distinct and separate body, entirely independent of the navy) with the case of occasionally landing the troops, for the purpose of assisting in a merely naval operation, in the same manner as part of the sailors or marines might have been landed. The letter of Mr. *Stephens* clearly shews, that the troops on board, were to be subject to naval martial law; and it appears by the evidence, which will be afterwards stated, that they actually considered themselves *as marines, and acted as such*, nay, *General Medows* acknowledges in the printed proceedings, that the troops were landed *by the orders of the Commodore*.—If the Commodore had a right to command them to act as marines on board, can it be doubted that for a merely naval enterprize, he could order them occasionally to land as marines; and if he could do so, with what colour can it be said, that the landing of a few troops in this case, by order of the Commodore, to prevent the escape of the enemy from their ships, could convert the whole troops into a separate and distinct army, entirely independent of the navy, and unconnected with it, though

though the whole troops still continued to be borneon the ship's books.

The 3d erroneous supposition is, that where a capture is made by a joint co-operation of two distinct powers, the one on land and the other at sea, the case is not within the prize act, but the prize belongs wholly to his Majesty *jure coronæ*.

This point has never yet been so determined. The only case which comes near to it, is that of a prize, taken by the joint operation of a commissioned ship, and of one which had no commission; in such a case, it was very lately, in a single instance, determined by the present Commissioners of Appeal, that the share which would have belonged to the non-commissioned ship, should belong to the crown; but it was not determined, that the effect of the joint operation, was to take the whole out of the grant made by the prize act, so as to affect the share of the commissioned ship; and there does not seem to be any fair ground, for carrying the effect of co-operation so far, even if that late and solitary precedent

cedent were not to be considered as having gone much too far.

It is material to observe, that in this mode of considering the case, the army is to be held as a non-commissioned power, assisting in the capture, and on that ground incapable of acquiring any thing to themselves; for if two distinct powers, who are both authorized to make captures, shall happen to co-operate in the capture, the prize act takes effect, and the capture is divided between them.

The army by the instructions was authorized to co-operate in the capture of the *Cape of Good Hope*, but was not, it is true, authorized to co-operate as a separate army, in any other capture; the most natural conclusion from which, would seem to be, that with regard to all other captures, which could come under the description of prize, this army, was not to be considered as a separate and distinct body, but as part of the crews of the ships, and entitled to share as such.

But if the army were to be considered as separate and distinct, why should its co-
opera-

operation, in a purely naval enterprize, produce a different effect, from the co-operation of a non-commissioned ship. The answer made, was, “ that the true ground of the decision in the case of a non-commissioned ship, was founded on the words of the prize act, *that the whole property is given to the whole captors*, but the commissioned vessel shall take only according to its *quantum meruit*, and the other vessel shall take as trustee for the crown.” The question however recurs, how can a distinction be made between a non-commissioned ship and a non-commissioned army, or a body of non-commissioned countrymen, acting on shore, and aiding a capture: the whole property is here also given to the whole captors; and why may not the army, or the body of countrymen, take a share as trustees for the crown, in the same manner as the non-commissioned ship? There is co-operation in both cases and there is also a want of authority in one part of the captors, to take for themselves; what ground of distinction is there between them, which should make the co-operation of the one acquire a share to the crown, and the co-operation of the other take the case entirely out

out of the prize act, and, vest the whole in the crown. It was said, “ that nothing was given by the prize act, but to ships and their crews;” but the prize act does not give any thing to ships, and not to the crews of all ships, but only to the officers, &c. in his Majesty’s pay, seamen, marines and foldiers, or to the crews of commissioned privateers, and therefore the crews of non-commissioned ships, are as much out of the provisions of the prize act, as any land-man or land army whatever. The Crew of the non-commissioned ship may aid the capture by landing, but still they will only take a share as trustees for the crown. In the present case, the troops, till they came to *Saldabna Bay*, were certainly part of the ship’s crews, and acted as marines, how can they then be distinguished, when they landed from the crew of a non-commissioned ship, landing and aiding a capture of ships. If there be therefore a means of distinguishing the two cases, it seems too fine and subtle to be traced by an ordinary understanding.

The 4th erroneous supposition is, that in this case, there were two distinct powers, and that as such they co-operated in this capture.

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Upon what ground can it be maintained that there were here two distinct powers. It appears by the prize act, that *soldiers* are particularly named, as a part of those, who are entitled to a share of prizes. If soldiers are entitled, does the number of which they may consist, create any difference? does the addition of land officers being on board with them, create a distinction? for they are seldom embarked without their officers; or does the particular rank of such officers? The prize act is silent as to every idea of this kind, and it is well known, that in practice, where prizes have been taken by ships having soldiers and land officers on board, they have uniformly shared with the crews. In the present case, a detachment of this very army, was on board the ships which took the *Heltwoltemade*, and shared with the crew of those ships, without any idea of their being either entitled to a larger and different share, as being part of an army, or, that the right to the prize was defeated, by their co-operation, and that it belonged solely, or in part to the crown. It will not be pretended that if the five Dutch ships had been taken at sea, by Commodore *Johnstone's* squadron,

with this army on board, they would have belonged to the crown, as not granted by the prize act, on account of the co-operation of two powers, one of which was authorized, and the other unauthorized, to take prizes : indeed if such a doctrine were admitted, what sea officer would willingly sail, with an army on board his fleet.

If this army then, was not to be considered as a separate and distinct body, as to questions of prize, whilst it remained on board the fleet, it is next to be considered, whether the circumstance of landing any part of such an army, in order to assist in taking ships in an unfortified bay or creek, can immediately change the nature of the whole, and render the army, as well those who landed, as those who remained, a distinct separate body, unauthorized to make prizes, and therefore, by their co-operation, capable of taking the whole capture out of the grant, contained in the prize act, so as to vest it in his Majesty *jure coronæ*.

It is admitted, that, in case of an attack upon a strong fortified place, though situated
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ed upon the sea coast, where it is necessary to land an army, in order to carry on distinct military operations on shore, which could not be done by the ships crews, acting as marines or sailors; the capture of goods made in such a place, will not fall under the description of prize, but may justly be considered as *booty*; but it is equally certain, on the other hand, that if the crews of ships shall land and take castles and other places on shore, it will be deemed prize; and the case has often occurred, for no distinction is made in the prize act or proclamation, whether the capture is made at land or at sea, by the crews of ships.

The question therefore is, whether the present case resembles that of an army landed, as a distinct and separate corps, to make a capture on land, which could not have been made by the ordinary crews of ships, or by such soldiers, as are often on board, or whether, this case is to be considered as purely a naval operation.

The circumstance of the Commodore's concerting with *General Medows*, the plan

of his attack, and of *General Medow's* issuing orders to the troops, seems of no weight in this question. It was a matter certainly of politeness and propriety, very becoming on the part of the Commodore, to show every possible respect to a person of *General Medow's* rank, especially as no measure could, by the instructions, be taken, with respect to an attack on the *Cape* itself, without the General's concurrence ; but the question still returns, was this an operation which required the General's consent, or the aid of a regular army, to be landed, and to act on shore. If the Dutch ships had been met at sea, it is probable, that the Commodore would have equally communicated his plan of attacking them, to the General, who was constantly in the Commodore's ship, and would have desired him, to issue orders to the troops, to give their assistance as marines ; but this would not have altered the nature of the service, it would still have been a capture, of prizes, by the *officers, sailors, marines, and soldiers* on board, who would, under the prize act, have been entitled to share, according to his Majesty's proclamation.

It appears, by the letter from *Mr. Stephens* of the admiralty, that while on board, the troops were to be subject to naval martial law, and it was proved, by the evidence of captain *William Johnstone*, one of the witnesses produced by *General Medows*, upon the 3d and 4th articles of the General's first allegation, " That during the whole voyage of the fleet and army, and while they continued in *Saldanha Bay*, the deponent, and the rest of the persons employed in the land forces, as he believes, considered himself and themselves, as acting on board the ships, in the capacity of marines, and the common soldiers did duty as such marines, by assisting to work and watch the ships, and in case of neglect of duty, on the part of the soldiers, the commanding officer of the ship complained to the commanding officer of the troops on board, to have such neglect properly noticed."

It is also proved, by *General Medows's* answer to the 7th article of the allegation on the part of the navy, " That the troops articulate under the command of *Lieutenant Colonel Humberstone*, were landed at the

“ special instance and request and *in pursu-*
 “ *ance of the public orders* of the said Com-
 “ modore *George Johnstone*, and in pursu-
 “ ance of the public orders, in his disposi-
 “ tion for the attack of the Dutch East-
 “ India ships, then lying in *Saldahna Bay*.”

It appears by the said disposition made for the attack, and by all the evidence that the principal object of ordering the troops to land, was, in order to intercept the enemy, and prevent their escaping from their ships, and thereby intimidating them from setting them on fire ; and that there was no fortification whatever on shore, and only two guns at the point of *Hotties Bay*, and two more at the Post House, 2, miles South, near *Riot Creek*, both which posts the enemy abandoned.

But that which most clearly distinguished this landing of the troops, from the landing of a regular army to act on shore, is, that in the case of landing an army for a distinct land service, the troops, immediately upon their landing, are struck off the ships books, and no longer continue to be borne as part
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of the crew. This would have been the case if *General Medows* had landed with his army to attack the *Cape*, but it did not happen, in the present case, and it would have been ridiculous, if the troops which were put on shore for that temporary purpose, had been struck off the books, any more than sailors or marines, who are landed for a particular purpose, are struck off; and this circumstance, of remaining on the ships books, is of the greatest consequence in judging of this cause; for by the established construction of the prize act, all persons who are borne on the ships books at the time of the capture, are entitled to share in the prizes, and as the troops still remained on the books, they were still to be considered, in all respects, as part of the ships crews, they they were still to be considered as marines, and subject, as *General Medows* admits, to the orders of the commander of the squadron,

If it had been contended, by the navy, that the troops, by being landed, had ceased to be part of the ships crews, and had therefore been entitled to no part of the prize money, nothing could have been more un-

reasonable or unfair. If they had further contended, that by landing only a part of the troops, the whole army ceased to continue part of the crews, and were therefore entitled to no prize money; the proposition would have been still more extravagant and inequitable; but the navy always admitted, that the troops on board had a little to share, so long as they continued on the ship's books.

The army on the other hand, not contented with this, maintained, upon an idea that the instructions extended to this case, that they were entitled to a separate and larger share, as an army, and that the landing a small number of the troops, for an occasional naval service, which could have been equally performed by the marines and sailors, was sufficient to change the whole troops, from their character of marines, into a regular separate army, acting on shore on a distinct and independent land service.

General Medows had no such idea, he remained on board the *Romney*, considering the whole as a naval service, and after the Commodore had fixed the grapple, and had been followed by a great many other boats,
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the General came also in a boat, to assist in towing off the *Middleburgh*, in flames, but not in his military capacity, nor as exercising any command.

The question therefore still recurs, whether this was or was not, a purely naval operation, for if it was, the presence of soldiers, or an army on board, can no more take it out of the prize act, then if the Dutch ships had been met at sea, with the same army on board his Majesty's ships.

But the Commodore declared by his letter, that it was his opinion they ought to go to *Saldahna Bay*, with their whole force, and *General Medows* in his answer to that letter, said, he hoped *their joint endeavours*, their vigour and expedition, would be crowned with success. The Commodore's meaning is clearly explained, in his letter dated the next day, 18th of *July*, three days before the attack. He did not deem it safe, to divide his force, lest *M. Suffrein*, who must soon have known of the separation, should be enabled to destroy that part which was intended for *India*. *General Medows's* expression of *joint endeavours*, could apply to nothing when speaking of a purely naval service

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vice, but the assistance which the troops might give, as part of the ships crews, and acting partly on board, and partly on shore as marines. And as it is clear, that the Commodore had no idea of the necessity of a land force, when he used the expression of *our whole force*, so it is equally clear, that *General Meadows* considered a land force as totally unnecessary for this enterprize, since he recommended the attack as fit to be made, after all the troops and half his Majesty's ships should be dispatched to *India*.

But the putting a single question, seems sufficient, to end all cavil upon this point.

Can there be a doubt whether five British ships of the line, besides a number of inferior vessels, could easily have spared a sufficient number of men for every possible service, that could be necessary in order to attack and secure five Dutch merchantmen, in an open unfortified Bay, although there had not been on board a single soldier, or even a single marine?

The facts whether the troops were or were not landed, before the capture of the Dutch ships is not at all material to the question. If this was purely a naval operation,

ation, and that the troops, continuing to be borne on the ships books, acted only as marines, and as part of the ship's crews, they would not be considered as a separate army, in respect to this question, even if it were ever so clear, that they had landed before the capture.

But the idea of the Commodore's having prevented their landing, in any manner, which can bring an imputation upon him, must have arisen from a want of attention to the facts in the cause. Nothing could be more meritorious, than the dispatch which the Commodore used, when the leading ships turned their heads to the sea, to get rapidly into the bay, and to that circumstance most certainly it was owing, that the flames were extinguished in so many of the Dutch ships. *General Medows* in his 11th allegation, in the court below, does justice in that point, to the Commodore, he says, that " the Commodore determined to push
 " on immediately, without waiting for the
 " landing of all the troops, as the shifting
 " the troops would have given time and opportunity to the enemy, to destroy their
 " ships : " and *Captain Hart*, one of the witnesses for *General Medows*, deposes to the
 11th

11th article of *General Medows's* allegation,
 “ that he believes *Commodore Johnstone* was
 “ induced to push on for the enemy's ships,
 “ without waiting the landing the troops,
 “ from the circumstance of his wishing to
 “ prevent their being burnt, as he supposed
 “ them to be on fire, and his perceiving
 “ that no opposition, was intended by the
 “ enemy, they having deserted a battery,
 “ situated at the entrance of the harbour,
 “ on the approach of the fleet, and before
 “ they had passed the point of land form-
 “ ing the harbour.”

With respect to the opinion, which the
 Commodore gave, a few days after the cap-
 ture, that he thought the army, entitled to
 share, *according to the instructions*, he has ex-
 plained in his answer to *General Medows's* alle-
 gation, in the inferior court, the reasons he
 had for giving that opinion, which were
 “ that he thought it unbecoming in
 “ him, to have any dispute or altercation
 “ with *General Medows*, on a subject of that
 “ kind, which might lead to general ani-
 “ mosities between his Majesty's fleet and
 “ army, and where interested motives might
 “ be

“ be imputed as the cause of the differ-
 “ ence, but at the same time he trusted,
 “ that his opinion, could never operate a-
 “ gainst the rights of others, in case the
 “ matter was brought to a judicial deci-
 “ sion.” And at it now appears, that the
 Commodore’s opinion, proceeded upon a
 ground which is finally abandoned as unte-
 nable, namely, *the spirit of the instructions*,
 it seems impossible, that this erroneous opi-
 nion, given under such circumstances, can
 now have any weight in determining the
 present question. The Commodore did not
 consider the army in this enterprize, as a
 distant and separate corps, but erroneously
 imagined, that the instructions applied to
 this case.

It was strongly urged, in argument, that
 prizes are a grant of the crown; that it must
 always be in virtue of the consent of the
 crown, that an act to grant prizes is allowed
 to be introduced into Parliament; that its
 construction ought to be like that of other
 grants, and that nothing more shall be given
 by construction than is absolutely and posi-
 tively given by the words. That the grant
 must

must not be enlarged by equity, nor stretched beyond its literal meaning, and the inference from this position was, that as nothing is given by the act, but prizes taken by ships and their crews, it follows, that when any power assists in the capture, except the crews of ships, nothing is granted, and the crown's right revives:

But tho' grants of the crown, are not to be extended by equity, beyond their meaning, yet on the other hand, no captious objection is to be taken, in order to restrict them within narrower bounds, than their true meaning. In the case of prizes, the Crown, for public purposes, has held out a reward for encouraging the capture of enemy's ships, both with a view to encourage seamen, and to distress the trade of the enemy. The words of the grant *gives all*, without reserve, and gives it to the captors; it describes these captors, but not as merely seamen, it describes all officers of every kind in his Majesty's pay, and also all other persons that can be on board a ship, and all persons who can be on board privateers, though not in his Majesty's pay. It does
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not describe landmen, because as we are situated in an island, it can hardly happen, that the ships of an enemy can be taken by any other, than persons on board his Majesty's ships and officers in his pay, or by the crews of privateers. But the grant gives all, and reserves nothing: would it then be a fair construction of the act to say, that though nothing is reserved to the crown, yet, as in the grant, a general description is mentioned, of the captors to whom it is given, if any one, not within the description, shall give the least aid, the grant shall be void, and the whole revert to the crown; would it not be a more fair and sounder construction of the act, to consider that aid-like aid given in the case of seizures made by custom-house officers, as immaterial and no way affecting the rights of the authorised captor.

Suppose the case of an officer on board a man of war, and not in the King's pay, who during the engagement fights gallantly, and is of the most material service in the capture; would it be a decent construction of the act, to say, that his unauthorized
assistance

assistance had vitiated the noble exertions of the whole company, and that the whole must revert to the crown ; or suppose this single passenger, in the attack of an enemy's ship in a harbour, jumps overboard and swims with his sword on shore, and by his single gallantry, disengages or cuts the ropes which kept the prize, in a position so advantageous as to secure her from capture ; could his single aid be fairly construed to be such a co-operation on land, as would take the case out of the act of parliament, because the act has given prizes to the captors, being officers in his Majesty's pay, and on board his ships, or to the crews of privateers : Would not such a construction be considered as monstrous, and contrary to every idea which has ever prevailed in this country.

And if the aid of a single man, will not be sufficient to take the case out of the act of Parliament, where can the line be drawn. Except in the single instance of a very late decision, by the same commissioners of appeal, which held the non-commissioned ship aiding in a capture, as acquiring for the

the crown, the practice has been, to disregard the co-operation of unauthorized persons, and to suffer the grant to operate in favor of the authorized captors ; in the same manner as daily happens in the case of revenue officers. If a seizure is made by a person not authorized to make it, and a revenue officer afterwards comes up, the seizure entirely belongs to him, and the aid and co-operation of the unauthorized person, has never been considered as having the effect of either vacating the revenue officer's right, and giving the whole to the crown, or of converting the unauthorized person into a trustee acquiring a part of the seizure for the crown.

But the construction, here attempted to be put upon the act, goes still farther. Every person who aided in this capture was within the precise description, contained in the act, they were either *flag officers, captains commanders, or other commissioned officers in his Majesty's pay, or seamen, marines, or soldiers on board*, but it is pretended they did not fall within the description, because the soldiers were intended for the attack of the *Cape*,

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and were, in case of such attack, to be landed, and form a separate and distinct army.—But what is there in the act which authorizes an enquiry, on what account, or with what view, the soldiers were put on board, or for what other service they were afterwards intended? The act gives to *all soldiers*, of every description, that are on board, a share of the prizes, and considers them, as to that effect, as a part of the crews of the ships; so that this sort of construction, in order to vacate the King's grant, must appear not only new, but contrary, to that literal strictness of construction above denounced.

The danger of admitting constructions, in order to narrow the grant of prizes, may be seen by what has happened lately.

The courts had adopted a rule, that all ships which were in sight when a prize was taken, should be entitled to share; upon an idea that they might have intimidated the prize. This general rule, is certainly in many cases unjust, for it often happens, that the force of the real captor is such, that the ship in sight, could no way have contributed to
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the capture. A case lately occurred, where the *Providence* privateer took a Dutch merchantman, called the *Twee Gefusters*, and at the time of capture, the *Spitfire* privateer came in sight. The *Spitfire* had no commission; she had applied for one, and it issued the day after the capture. The Court of Admiralty 21st June, 1783, decreed, that the *Spitfire* should have half the share, which she would have been entitled to, if she had been in possession of a commission. The *Providence* appealed, and the Commissioners on the 10th and 15th Feb. 1785, after affirming the decree, so far as it had rejected the claim of another ship to a part of this prize, reserved the consideration of the question, so far as concerned the share of the *Spitfire*. But at that moment the King's Procurator in his office of Admiralty, appeared, and contended, that the *Spitfire*, though incapable of taking herself, had a right to half, as trustee for the Crown. This new doctrine was adopted, and the Commissioners of Appeals, on the 8th March, 1785, decreed one half of the prize to belong to his Majesty, as a droit of Admiralty.

This recent decision, seems to have laid the foundation, for another step; for in the present case, it has been found, that the assistance of an unauthorized power, co-operating in taking a prize, does not acquire the half as trustee for the Crown, but takes the case entirely out of the prize act, and gives the whole to the Crown; and there is no knowing, to what length this species of interpretation, may hereafter be carried; and indeed, if the slightest possibility be admitted, that the rights of an authorized party, can be defeated, by the most trivial, or the most important, interposition of a party not authorized, the consequence must be, that authority and commission are things of no absolute meaning and steadiness; but their operations and validity must depend, upon matters altogether extraneous, and not resulting from the conduct of those, who are invested with such powers.

The idea that it is equitable, to construe the words of the prize act, so as to vest the prizes, in this case in the Crown, in order, that they may be distributed in more just proportions, between the navy and army; is a doctrine of the most dangerous nature
and

and tendency. In the first place, the distribution upon the footing of the prize act, is more just, in the present case, than any other, that can be adopted; for it gives a share to the troops, with the crews of the respective ships. The General, indeed, does not share with the Commander of the squadron: but can it be said, that he had the merit of this naval operation? could he have conducted the ships, into the harbour, with that rapidity which saved the prizes from being burnt? did he not object to the measure, and consider it as a false move? and did his concurrence in landing a few troops, to have intercepted the flight of the enemy, amount to that sort of merit which could fairly entitle him, to share with the naval commander, who devised the plan, persisted in it, in spite of opposition from the General, and executed it, with such ability courage and precaution, as insured success. But secondly- if a more equitable distribution could in fact be made, than under the prize act, is it not most highly dangerous, to admit of strained constructions, upon an act, which holds out rewards to his Majesty's navy, and which has been justly considered as one of the utmost

consequence to the service. If the act of parliament is wrong, which is far from being the case, let it be amended by the legislature, with regard to future cases; *but present disputes know no rules but past provisions.* It is unfair, as well as hazardous to the service, to entangle a class of citizens, who have destined their lives to the favourite national service, in legal subtilties, and who may reflect in an hour of danger, and while under the pressure of every bodily hardship, that notwithstanding the rewards held out by the King's proclamation, and a solemn act of Parliament, they are still in the power of sedentary politicians and lawyers, who by nice and critical constructions of the statute, may at pleasure, let in the executive power, to play off one service against the other, and perhaps, after some habitual success in that way, divert the prize money from both, in favour of some more peaceful departments of office.

In the Appendix are annexed the letters which passed between the Commodore and the General, and also several precedents of ships taken, where a co-operation at land
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was at the same time going on ; but in none of these instances, were the army found entitled to share ; unless in two cases, where a fortified place and the ships in the harbour, were delivered up at one and the same time, by capitulation.

APPENDIX.

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A P P E N D I X.

(COPY.)

Romney at Sea, 8th June, 1781

S I R,

THE difficult, situation in which I am placed by the naval and military force which the French have sent to counteract the purposes of our expedition, together with the late season of the year, the sickness which has got among the troops and seamen, and the period of the monsoons, which will affect the arrival of the East India ships at the ports of their destination, and also the small quantity of water that is found in several ships of the fleet, render the risque so great upon every alternative I can propose to my mind, that I am persuaded you will think it prudent in me to ask your opinion in writing on the measures to be adopted.

My

My own sentiments have not altered since I considered the subject, and reduced my thoughts to writing on leaving *Praya*, in the paper I shewed you, and which I now inclose, but the sickness in the *Hero* and *Isis*, and the short quantity of water discovered in the *Isis*, *Resolution*, and *Saint Carlos*, together with the sickness in many of the ships, render one of the propositions for removing the troops difficult, if not impracticable, for so long a voyage as that to the *Cape of Good Hope*.

I am perfectly satisfied with every thing you have said to me on the subject. I respect your opinion, which is always clear, manly and comprehensive; and it is that respect which makes me desirous of possessing it in writing in case of any accidents to either of us. I am with the greatest respect,

Sir,

Your most obedient, and

Most humble servant,

(Signed)

GEO. JOHNSTONE.

Major Gen. Medows.

Extract of a Proposition respecting landing in Saldahna-Bay, delivered to General Medows the 8th June, with his Answer, dated the 10th of June, 1781.

RESPECTING the Fourth Question, as far as I can judge, I think an attack by *Saldahana-Bay*, at this time of the year, and under the situation in which the enemy may be expected preferable, because supposing the enemy to have raised any batteries in *False-Bay*, and disposed of their ships in *Simon's-Bay*, allowing that only three of the French ships are arrived, and the two Dutch frigates and the *Serapis* and two Dutch ships with lower tiers on them, which is the least that can be expected; in this case an attack at *False-Bay* would be impracticable.

As to *Table-Bay*, an attack can only be made there at this season of the year on a fortunate fair day; there is no delaying to collect intelligence which can be allowed; the matter

ter must be risked if we mean to anchor in *Table-Bay*. Now shall I suppose only half of the French troops landed, would there be a probability of success attending the attempt? Would any one chuse to risk the attack before it is known whether they are landed or otherwise? How can this be obtained without risking the whole at *Table-Bay*, or going to *False-Bay*? The advantages of *Saldanha-Bay*, are briefly these: we shall get a safe anchorage and easy debarkation of all our troops, provisions, and stores, and possibly a peninsula on the south point to secure a retreat to; we shall take the enemy in surprize, where most probably we are least expected. If the French are landed, we shall be able to judge how far we ought to proceed or retreat. If we are not of force to meet the enemy in the field, it would be imprudent to land either at *Table-Bay*, or *Saldanha Bay*, or any where else. If we are of sufficient force, all the disadvantage will come from the distance we must march, and the difficulties in the ground to be passed over, and the trouble and difficulties in getting up our cannon and provisions, and maintaining a communication

munication with our ships, and the danger of cutting off the retreat of the troops in case of a defeat; the distance is only forty-two miles, the road is even, but sandy. It is most probable, that bullocks, and even waggons, may be collected to draw the stores and artillery; but supposing the seamen and troops are obliged to draw up the field-pieces, it is not a work of such difficulty as to balance the other advantages.— If we land at *False-Bay*, we must equally draw the artillery twenty miles. At *Saldahna-Bay*, we shall be more in a situation to favour the junction of slaves, and discontented inhabitants, who may be disposed to join us; and in case it may be necessary to send round heavy artillery by sea, it can equally be done thereafter, when the troops have secured a place to land them.

Undoubtedly, if the French ships are not arrived, it were better to push for *False-Bay* as once, and destroy the enemy's navy immediately. If the French are arrived, and joined a superior force, the measure of pushing to *False-Bay* or *Table-Bay* may be fatal;
be-

because we risque all, and there is no place to retreat to.

The whole of the point under consideration will therefore depend on the probability of the French being before us at the *Cape*, or otherwise, and of the force they may have collected. As I said before, I believe the probabilities, that the greatest part will be before us, do greatly preponderate; and the reason why I do prefer *Saldabna-Bay* springs from this belief; and because, supposing the French are not arrived at the *Cape*, we are equally sure of success; and if they are arrived in force, we can better secure our retreat. But whether we determine the attack shall be made on *False-Bay*, *Table-Bay*, *Chapman-Bay*, or *Saldabna-Bay*, or wait the chance of accidents when we shall get there, and acquire further information; still some frigates and cutters may be sent forward to gain intelligence, with a proper rendezvous to rejoin us in a certain parallel of latitude, at a distance from the land; and the disposition of the troops, and boats, and signals, and provisions, and artillery, with the proper signals for landing in

in the most effectual expeditious manner without confusion, must be equally settled in either of these cases, and on the same plan, and therefore I do not 'enumerate the particulars, as tending in no instance to determine the present subject of deliberation.

(C O P Y)

Romney at Sea, 10th June, 1781.

S I R,

I have read yours repeatedly, with the attention due to all your writings, and have admired without being surpris'd, at the number of difficulties, and our critical situation which you have drawn, with a clearness and precision, the characteristic of all your performances.

My fixed and unalterable opinion upon our situation is, that it is incumbent upon us as soldiers and servants of the public, to pursue our instructions, which are distinct and clear, as long as manly perseverance can be construed short of rashness.

I do not think there is any probability of our taking the *Cape*; but till we hear some greater confirmation of what we suspect, it is possible; and therefore I think we ought to try.

For the *Indiamen*, I would take the troops out, if I could; if not, I should take them on, without doubt; in all situations something must be risked, in ours every thing.

For *Buenos Ayres*, I am so convinced that it was contrary to the King's and Minister's intentions, that I do not consider the practicability of it; which if I did, perhaps I should doubt, giving very little credit to the instructions affecting us, and thinking they have long had time to be prepared.

For *Saldabna Bay*, if you think proper, I have no objection to going there; but the greatest, to landing with so small a force. Forty miles from the *Cape* in an enemies country, without water, through difficult passes, and without any possibility of securing any convoys, or keeping up a communication

munication with the fleet; I should not chuse to undertake it with the ten fine regiments that *General Grant* carried with him to the *West Indies*, enured to danger and accustomed to fatigue; and compared to these three young regiments, their is scarcely greater military odds. If I commanded at the *Cape* with the country on my side, it is the very situation of all others I should wish my enemy. I see nothing myself but to continue the *Cape* project till it becomes impracticable; the moment you think it so, from naval difficulties, of which I have no judgment of my own, and in which, as in every thing else, I have the highest opinion of yours, I am ready, that instant, according to my orders, to go with the troops allotted to the *West-Indies*.

Speaking of landing in *Saldhana Bay*, I have said above with so small a force, because as essential as I look upon the sailors in storming a place, upon a long march I look upon them as a disadvantage.

If we failed at the *Cape*, and you had chose it, I could have justified to myself going on to *Ceylon*; it is in some degree a con-

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tinu-

tinuation of the same plan against the same enemy, and in the same country ; the *Dutch* cannot already be prepared every where ; and the *Cape*, if it is made that use of, is become the finest feint. I own with the little, or rather no information we have at present, the enterprize is full of risque and difficulties ; but with the great probability of the natives being on our side, I think we might surmount them.

Success would be brilliant ; and even if we were defeated, our debris would be still a re-inforcement of consequence to our friends in *India*, where I think so far from having any *Europeans* to spare from the situation of affairs at present, and the contests that are likely to be in that country, it is possible they may be much wanted.

But this I do not wish, and only name, because it is the only deviation I could reconcile from my instructions.

I am,

With the highest respect,
esteem, and truth,

S I R,

Your most obedient humble servant,

(Signed)

W. MEDOWS.

Commodore Johnstone, &c.

(C O P Y)

Romney at Sea, July 17th 1781.

S I R,

HAVING reflected upon our conversation last night, and your having asked my opinion in writing, free from all artful selfish insinuations, I give it you with the honest freedom of a soldier and a man.

I am persuaded with you from our intelligence, that Monsieur *Suffrein* is arrived at the Cape with his fleet; and that granted, I think any further attempt upon it not only imprudent, but impracticable.

It becomes then a serious consideration how to turn the force intrusted to our care, to the most beneficial service to our country; and believing from our intelligence, also, the success of *Hyder Ally*, I agree with you, it is by sending the whole military force to *India*; our numbers I have but too much reason to fear, will barely amount to the in-

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tended

tended numbers of the ninety-eighth and hundredth regiments, and the artillery stores, &c. &c. seem calculated in some measure to supply Colonel *Bailey's* loss. In short, the situation of affairs I think, as you do, justifies this deviation from our orders.

For *Saldahna Bay*, I think it a false move to take the convoy into it, from the danger of getting in; the difficulties, perhaps of getting out, the time of year, the sickness of the troops, the badness of the water, the necessary delay, the want of vegetables and refreshments to the men that begin to have the scurvy, and which once begun, is apt to spread fast, from all these circumstances, it appears to me replete with risks and difficulties, without any appearance in an enemy's port of a sufficient compensation,

Though these are my sentiments, I wish to have it perfectly understood, I am ready with the chearfullest alacrity to co-operate with yours.

With regard to the five Indiamen in *Saldahna Bay*, after you have sent away the convoy under the Monmouth, the Hero, the Isis and Active, to make the best of their way
to

to *Madagascar* or *Johanna* to refresh in their way to *India*. Your going in with the *Romney*, the *Jupiter*, the *Jafon*, the *Diana* and the *Bomb*. I think it a spirited enterprize, in which I not only expect, but most sincerely wish you success. I have the honor to be,

S I R,

With great esteem and truth,

Your obedient,

Humble servant,

(Signed,)

W^M. MEDOWS.

P. S. I had wrote this letter and barely finished it, when I had the honour of yours, and to which I only beg leave to add, that no loose, vague or undetermined measures are, I conceive, owing to me; and I apprehend I never have varied from saying, I will support with the chearfullest concurrence, the plan you project, though it happens not to be my opinion, as our operations depend so much upon naval calculations, of which you must be so much the better judge than me; and as we have not proof positive of *Monsieur Suffrein's* arrival, I shall with the great-

est pleasure assist in the execution of your scheme at *Saldanha Bay*, where I heartily hope our joint endeavours, our vigour and expedition will be crowned with success.

(Signed,)

WM. MEDOWS,

(Copy)

Romney, at Sea, 17 July, 1781.

S I R,

IN consequence of the conversation I had the honour to hold with you last night, by which I perceive that our opinions on the measures we ought to pursue, differ very widely; and that every thing is still loose, vague, and undetermined, notwithstanding I thought we had come to some conclusion the other day, as it is losing no time, and the weather permits, I take the liberty, to prevent all mistakes, to ask your opinion in writing, to which I shall endeavour to pay the utmost deference, assuring you at the same time, that nothing in life can be more painful to me than possessing different sentiments from yours, whose honour and judgment

ment I sincerely respect; but this being my misfortune at present, it would be want of integrity in me not to avow it.

My own opinion is, that we ought to go to *Saldahna Bay* with our whole force, and take or destroy the five Dutch East-India ships, which is an object of the utmost national consequence, and an opportunity which ought not to be lost.

In this bay we can ride in safety from storms; we can defend ourselves against any attack from the enemy by sea or land; we shall know how matters stand at the *Cape* with certainty, and be open to the chapter of favourable accidents; we can recruit our water, though not of the best quality; we can refresh our people, and make the necessary arrangements for the East-India voyage, to which place I think all the force that can be spared, should be sent off, provided all further operation against the *Cape of Good Hope*, are deemed impracticable or improper.

In every operation of war, risques must be run; our situation demands we should haz-

ard more than common: I think under many difficulties, by going to *Saldahna Bay*, we shall incur the least risque, and may perform the greatest national service.

The going upon that coast in the winter season, if we do not get into the bay, and the badness of the water, and the possibility of the Mauritius squadron joining the squadron under *Monsieur de Suffrein*, and the troops coming from the Mauritius also to form the attack by land, while the enemy may attempt to enter by sea, are the dangers to be apprehended; but which I acknowledge do not startle me in the least, either from the probability that they will happen, or the magnitude of them should they happen, provided I saw such a cheerful concurrence in the measure I propose, as would even create means to oppose unfavourable events, should they occur; but where that is not the case, I know too much of human nature not to be sensible, that the slightest untoward accident, in such a disposition

position of things, may disconcert us entirely.

I am, With the greatest respect,
S I R,

Your most obedient, and
Most humble servant,

(Signed)

G. JOHNSTONE.

Major General Medows, &c.

Romney, at Sea, 18th July, 1781.

S I R,

AS you propose to proceed to the East-Indies with the troops, and as I wish in every thing to do what is most agreeable to you, but particularly in what regards your own conveniency and accomodation; I beg to know, in case I can effect the dispatch of the vessels bound to the East-Indies at sea, in what ship you would chuse to embark, and what can be done on my part to effect it in a manner the most pleasing to you.

If

If you chuse to go in the Monmouth, Hero, or Ifis, I think the best way would be for me to mention to the captain, your inclination, and I am persuaded they will all, and each of them be proud of the honour of carrying you; but if you do not chuse that mode, I will give an official order to the captain to receive you and your suite.

If you make choice of the San Carlos, or any of the armed transports, I will make such removes and arrangements as you shall direct, and our situation at sea will admit.

I know how very easy you are in all these points, and how tenderly you feel on the subject; and if I could have guessed how you would chuse matters, should be arranged, I would not have troubled you.

I shall be glad also to know your opinion on the removes and arrangements of the troops from the ships which remain, into those that are going to the East-Indies, and likewise to what part of India, I should direct the force to proceed; for although I am clear in opinion myself that the whole
naval

naval and military force which is destined for India should be sent to *Bombay*, considering the season of the year, and the nature of the war with *Hyder-Ally*, where he is most vulnerable, and where the French will throw in supplies; and that Sir *Edward Hughes* must repair to *Bombay* in October, when the bad weather sets in on the coast of *Coromandel* and the fine weather prevails on the coast of *Malabar*; yet as you seemed to have some doubts on that head, I shall be glad to give your sentiments every consideration they so justly merit, in drawing the orders for Captain *Alms*.

I am, with the greatest respect,

SIR,

Your most obedient, and

Most humble servant.

G. JOHNSTONE.

P. S. That you may judge and see that my task is not so easy, I send you a memorandum of the things which are requisite to be done on sending off the convoy to the *East-Indies*.

MEMORANDUM of Things to be
done on sending off the Convoy to
the East Indies.

ORDERS to Captain Alms, and the different ships who are to accompany him.

Disposition of the Victuallers—some to *St. Helena*, and some to the *East*.

Dispatch a vessel to Sir *Edward Hughes* with signals and information,

Some of the ships to get cordage from the *Locko*.—To change the seamen in the transports, and send others in lieu if possible, as I promised at *Spithead*.

Shift the troops from the *Romney*, *Jupiter*, *Jason*, *Diana*, *Terror*, *Lark*, *Rattlesnake*, the two victuallers, and the *Infernal*, and provide them elsewhere with accommodation. Send from the above ships any ordnance stores they took in at *Spithead*.

Dispatch a vessel to *England*.

Col.

Collect *Captain Sutton's* evidence and move them into one of the ships, if practicable.

Supply three of the ships who are short of water with some casks from those who have more water in the proportion of men on board.—Accommodate the General and his suite, and shift their baggage.

Take the navy provision from the *Jupiter*, if possible.

In my opinion neither the *Admiral Keppel* or *Jupiter* should be carried forward, as they are mere clogs on the convoy.

Romney at Sea, 18th July, 1781.

S I R,

With the liveliest sense of your attention and civility in thinking of my convenience, amongst such a multiplicity of other things of consequence attending your various

rious

tious arrangements, I set down to thank you, and then to say, that first, my taking the whole force to *India* depends entirely upon your thinking it absolutely necessary, and from the situation of our affairs there from our intelligence, that such a deviation from our orders in the distribution of the troops is not only justifiable, but meritorious, otherwise I don't hesitate a moment in going with the forty-second additional companies, &c. &c. to the *West Indies*.

But your opinion that this is a necessary measure, which I look upon as the strongest bulwark against suspicions of my being capable of acting from the meanness of self-interest; I have no other choice of how I go, but the way I can be the least troublesome to the people concerned, without the least appearance of flight or neglect. If *Capt. Alms*, as eldest, could be troubled with me, and *Capt. Saltren*, I dare say *Capt. Douglas*, *Capt. Baker*, and *Capt. Hart* might be quartered without difficulty. If *Capt. Alm's* indisposition made it inconvenient, as I dare say it would, I should be very happy with *Capt. Hawker*; but I had rather go in a
crouded

crowded transport, than into any persons
ship with an order. With regard to what
part of *India*, from your knowledge of every
thing relative to that country, I should wish
your orders to *Capt. Alms* were exactly what
you thought best; and as I have ever had
reason to be perfectly pleased with every ar-
rangement of the troops hitherto, I should
wish you to continue them. I am with great
respect,

Sir,

Your most obedient and most
humble Servant,

(Signed)

W. MEDOWS.

Commodore Johnstone, &c. &c.

Romney at Sea, 18th July, 1781

S I R,

AS all attempts of my attack on the *Cape
of Good Hope* are now relinquished as impru-
dent and impracticable, I am clearly of opi-
nion that it will be most beneficial for his
Ma-

Majesty's service, that all the force by sea and land which can possibly be spared from this expedition, compatible with the other services which are ordered to be performed here, should be sent off to reinforce our friends in the *East-Indies*.

I am persuaded the account we have received of the wasteful irruption of *Hyder Ally*, and the defeat of *Colonel Bailey* in *September*, is not exaggerated.

It is the severest loss which our arms have yet suffered from an Indian power. The example is fatal, and every exertion should be used to recover our former situation, and prevent the bad consequences from spreading; and I think we ought not to hesitate a moment in deviating from our orders, and adopting the Measure of sending the additional troops to the *East* instead of the *West Indies*.

As much therefore as I opposed that idea before, as eagerly do I embrace it now; nor do I find any inconsistency or weakness of judgment in that conduct, because the
event

event which has occasioned my change of opinion was totally unforeseen, and beyond all probability at the time, and seems after all to have depended on an accident, in the blowing up of some tumbrils during the battle; whereas the arguments which were adduced before, were fully known to the King's Ministers, when they gave us our orders to the contrary.

But the loss is now immense, and the loss of reputation is hardly to be recovered; I fear it may prove a second *Pultowa*.

In such a situation, where the troops are so far advanced, and the stake so great, it must appear to every one a most meritorious conduct in you, in doing what is right, in sending others, and farther in going yourself to the assistance of our friends in distress.

I am persuaded his Majesty will view it in that light; and the East India Company and their servants would be very ungrateful if they did not also consider it as such; for although *Sir Eyre Coote* may be successful, it is as probable

bable he will have many difficulties to encounter. You know my own wish is that you should go to *England*; for whatever pains and labour a man may have undergone to effect the purpose of his mission, yet a fruitless expedition will always produce parliamentary enquiry; still I cannot put this in competition with the service of carrying a connected force to *India* under a proper head, who can give consequence to the succours you carry.

It is too mean an idea to entertain for a moment, that selfish considerations can have any mixture in your resolves on this occasion; if that passion had operated on your conduct, it must have been apparent in many instances before this. I can only say, that as far as I can judge of mankind, you are the last person likely to be accused of such motives.

But it is not merely the troops you carry, without any flattery, I think you convey such a present as *Sparta* sent to *Syracuse*, in your own experience, enterprize and character. It is needless to repeat here, that my great and only fears are, that you may
be

be intercepted, and never arrive there at all.

It is the interest of *France* above all things to prevent this reinforcement getting to *India*.

When we attack the East India ships in *Saldabna Bay*, *Monsieur Suffrein* must hear of our separation; he must then know the *Cape* is safe; he must also know that you must touch at *St. Augustine's Bay*, or *Johanna Bay* for water; he can then visit both places, and make sure of meeting you at the one or the other. Supposing such an event, it would be worse than the defeat of *Bailey*.

On the other hand I confess, that if the water proves so very bad in *Saldabna Bay*, it is possible, though not so probable, that we may be driven to as bad a dilemma. I should depend much on what good water would be found in the East India ships, even if they were set on fire, if not blown up. I must own excepting as to the water, against which I cannot be certain of any remedy, every thing prompts me to go to

Saldahna Bay, and not to separate our force while the French can know of such a separation so as to pursue the convoy with a certainty of success.

I am, with the greatest respect,

S I R,

Your most obedient, and

Most humble Servant,

(Signed)

G. JOHNSTONE.

Major General Meadows, &c. &c. &c.

Romney at Sea, July 19th, 1781:

S I R,

I am this instant honoured with your letter, and am extremely flattered with the contents. Confirmed in my own opinion of *India* affairs, by the sanction of yours, I shall undertake my part of it with alacrity and pleasure, convinced you will take every precaution the most spirited prudence can dictate,

tate, to prevent *Monsieur Suffrein* from counteracting us. I have the honour to be, with great respect, esteem and truth,

S I R,

Your obliged, and obedient
humble servant,

(Signed,)

WM. MEDOWS,

Commodore Johnstone, &c. &c. &c.

Minutes of a Proposition made by Commodore Johnstone to General Meadows, in the Presence of Captain Paisley and Captain Saltern in Saldahna Bay, on the Day the Fleet sailed from thence.

N. B. *The Fleet sailed 24th July 1781.*

“ I do engage *General Meadows* to land you and your troops, either in *Table*, or *False-Bay*, which ever you chuse, but I do not promise to keep up an uninterrupted communication with you, if *Monsieur Suffrein* should make a movement with his squadron to attack me.”

The

The General made answer, that his whole force did not amount to above 1900 bayonets to land, and they such troops as he did not chuse to risque his reputation on; and therefore he conceived that he might as well think of attacking *Paris* as the *Cape* under these circumstances. His sentiments, he said had been invariable ever since the French squadron had preceded us, that all attempts could only be considered as the height of rashness, and unbecoming the character of a soldier, and therefore he wished only to be dispatched for India without loss of time, for he would positively not land to attempt the *Cape*.

Romney, 27th July 1781.

DEAR GENERAL,

I am sorry to hear there is a likelyhood of disputes and litigation, concerning the sharing of the produce of the ships we took in *Saldanha Bay*. This I can assure you of, that there shall be no dispute between you and me on this subject; and I now declare in writing, what I said by word of mouth; that

that I am of opinion, the army are entitled to share according to the King's instructions.

It does not become me to prejudice my own corps, nor would it be prudent to irritate them ; and therefore I shall rest satisfied with giving my poor opinion, and doing what I think right myself, without further interference, leaving the rest to more infallible judges.

I am,

With real esteem, respect
and regard,

Dear General,

Your ever obedient,

and faithful servant,

(Signed,)

GEO. JOHNSTONE.

Addressed, Major General Medows.

PRECEDENTS.

PRECEDENTS.

LA CHARMANTE.

at Louisbourg, 1745.

COMMODORE WARREN and General Pepperell were appointed Commanders in Chief of a fleet and army, to be employed on an attack against *Louisburgh*.

The town surrendered by capitulation in *July 1745*. Commodore Warren gave orders for the ships *Sunderland*, *Canterbury*, *Princess Mary*, and *Vigilant*, to anchor in the harbour to assist in settling and repairing the garrison, and to defend the same in case of an attack by the enemy.

The

The Commodore also desired *General Pepperell*, in case any of the ships belonging to the enemy should appear at sea, to give orders for some of the land forces to go on board the ships, as they were not fully manned; and in consequence, the General gave out orders to the Colonel of the land forces, to draught eighty private men with suitable officers out of every regiment, and to hold themselves in readiness to go on board the ships when there should be occasion. On the 22d of *July*, 1745, in the afternoon, a ship was seen at a distance from the land making for the harbour, and also making a signal for a pilot to come aboard. She was soon discovered to be a *French* man of war of sixty guns, having *French* colours hoisted. *Commodore Warren* thereupon ordered the *Princess Mary* and *Canterbury* with land forces on board, immediately to go out and speak with said ship.

About day-break the next morning, the *Princess Mary* and *Canterbury* put out under *French* colours, and the *French* ship *Charmante*, seeing the two ships come out in that manner, approached them, and was taken
by

by them in view of the persons ashore without any resistance. A claim was given by Captain *John Huston*, who was on board the *Princess Mary*, praying to be admitted to share with the lieutenants, but the Lords of Appeals rejected his claim,

By this determination, the Lords of Appeal, not only rejected the idea, that *co-operation* could have the effect of either entitling the whole army to claim a share as trustees for the Crown, or of taking the whole out of the grant by the prize act, though part of the army assisted by orders of the General, in making the capture, and though the measure was concerted between him and the Admiral; but the Court went farther, and refused even to allow an officer of the army to share with the lieutenants of the navy, considering the whole as merely a naval operation and as a capture by the ships, and that the officers and troops could only share as individuals, in respect of their being borne on the ship's books, and part of the crews, but not according to their rank in the army.

The

The BELLAINÉ and HERMIONE.

At Pondicherry.

THE above ships were lying in the harbour of *Pondicherry*, close under the guns of the fort, when the British navy and army arrived to make an attack upon the place, and the ships were boarded by a division of armed boats, commanded by *Lieutenant Ourry*, who was detached for that purpose by *Admiral Stevens**.

The usual monition issued out of the High Court of Admiralty, on behalf of the commanders, officers, seamen, marines, and others, on board the boats, and on the 14th of May, 1763, the Judge pronounced that the ship and goods were rightly and duly taken and seized by his Majesty's said armed boats, under the command of *Lieutenant Ourry*, which boats were detached from a squadron of his Majesty's ships of war, under the command of the Honourable *Charles Stevens*, Esq. late Rear Admiral and Commander in Chief of his Majesty's squadron in the *East-Indies*.

* Some of the officers and men in the boats were killed and wounded by the fire from *Pondicherry*, then besieged by the army.

In this case the co-operation of the army on land, by intimidating the enemy, was not considered as of any consequence, though the navy and army were certainly employed on a joint enterprize, and the captured ships were under the guns of the fortified place, upon which the joint attack was made, but the whole was given to the navy.

Louisbourg, 1758.

THE town and fort of *Louisbourg* surrendered to his Majesty's fleet and army in the year 1758.

The ship *Bienfaisant* and the *Prudente*, were both in the harbour of *Louisbourg* on the 1st of *June*, when the squadron of *English* ships attacked and invested the harbour and city of *Louisbourg*;—these ships still remained in the harbour during the siege, till at last a plan was concerted between *Admiral Boscawen* and *General Amherst*, to attack and

and seize them, because their fire greatly annoyed our trenches. A number of boats were accordingly manned, with orders in case of a discovery or repulse, to retire under the protection of our troops on shore. The greatest part of the crews of the *Bienfaisant* and *Prudente* were on shore assisting to defend the place. The attack was successfully made on the 26th of *July*, and both ships were boarded and taken by the boats under the command of *Captains Balfour* and *Laforey*.

The King's Proctor instituted proceedings in the High Court of Admiralty, against the *Bienfaisant*; and on the 24th of *February*, 1759, the Judge condemned the ship and goods to the squadron of his Majesty's ships, under the command of *Admiral Boscawen*, and the officers, mariners, and others, in the service of the said squadron.—The *Prudente* followed the fate of the *Bienfaisant*.

In this case, the prize was taken before the surrender of the fortrefs. No regard was paid to the co-operation of the army on
land,

land, although the measure was pre-concerted between the two commanders, and though both the navy and army were employed in the joint service of taking the place, and the prize was taken in the fortified harbour.

The C O N S T A N Z A.

IN the month of *June* 1762, the *Havannah* was surrendered up by capitulation, to the British army and navy under command of the *Earl of Albermarle* and *Sir George Pocock*. It was agreed, that all ships in the harbour should be surrendered up with the town. The *Constanza* was a merchant ship laden with a cargo of sugar, cocoa, &c. lying in the harbour of the *Havannah*, at the time the town capitulated; both ship and cargo were the property of residents at the *Havannah*; they were seized by officers sent by *Commodore Keppel*, and brought to *London*.

The

The usual monition issued out of the High Court of Admiralty of *England*; and on the 4th of *May*, 1763, the Judge condemned ship and cargo to the fleet and army jointly.

The prizes in this case, were taken by the joint exertions of the navy and army, and were surrendered up to both in consequence of these exertions. The Court gave each a share, and did not entertain the idea, that their co-operation vested the whole in the Crown, as not being within the prize act. The navy did not claim the ships exclusively. It is believed there was some agreement or other arrangement before the expedition failed.

Pondicherry, 1778.

PONDICHERRY was besieged by a squadron of his Majesty's ships, under the command of *Sir Edward Vernon*, and a body of
of

of land forces under the command of *Sir Hector Munro*.

The following ships were taken at the above siege.

The *Manon* was taken on the 12th of October, about six leagues from *Pondicherry*, in the *East Indies*, by two armed boats belonging to his Majesty's ships of war *Rippon* and *Southampton* East-Indiaman, one of the squadron under the command of *Commodore Vernon*, in fight of the squadron then besieging *Pondicherry*.

The *Sartine*, was taken on the 23d of August, 1778, by his Majesty's ship, *Sea Horse*, composing part of the squadron under the command of *Admiral Vernon*, having been drove from *Pondicherry* by the army.

The *Fanchette* was taken on the 3d. of October, 1778, by his Majesty's ship *Coventry*, within about three miles of *Pondicherry-Road*, in fight of part of the squadron employed in the attack of *Pondicherry*.

The

The *Occident* was taken in *October*, 1778, after resistance, by the boats of one of the squadron, and the armed ship *Resolution*, in the service of the East-India Company.

On the 9th of *March*, 1781, Monitions issued against the above prizes out of the High Court of Admiralty, on behalf of the squadron under the command of Commodore *Sir Edward Vernon*. And on the 10th of *April* the Judge condemned the ships and goods to the commanders, seamen, and others, on board the ships composing the squadron.

There having been a private agreement between *Sir Hector Munro* and *Sir Edward Vernon*, in which the generality acquiesced to share and share alike, an action was brought by Lieutenant *Pole*, of his Majesty's ship *Rippon*, one of the squadron, who would not acquiesce in the agreement, and tried before Lord *Loughborough*, against the Agent for his share of prize-money: and a verdict was given for Capt. *Pole*, without any doubt in the Judge, that the army could not be entitled to a share of any ships taken at sea.

In this case none of the prizes seem to have been taken in the harbour, but two of them were taken within sight of the squadron employed in the siege, and certainly within sight of the besieging army. It is not explained whether the other two were also taken within sight; but in this case too, both navy and army were employed in the same joint enterprize; and yet the idea of co-operation, or its effects, did not occur, and the whole was given to the navy.

Fort-Omoa, 1779.

ADJUTANT GENERAL DALRYMPLE embarked on an expedition, by particular commission from *General Dalling*; and as he was proceeding thereon, accidentally fell in with his Majesty's ship *Charon*, *Lowestoff*, and *Pomona*, commanded by *Captain Luttrell*, returning from *Fort-Omoa*. *General Dalrymple* proposing that with the land-forces, assisted with such marines and sailors as could be spared from the ships, he would land and
 attack

attack the fort, whilst *Captain Luttrell* with the ships should attack by sea. *Captain Luttrell* returned; and *General Dalrymple* having landed with the force under his command, got possession of the Governor's house, after which the men of war sailed into the harbour, and cannonaded the fort. On the 20th *October*, 1779, the fort was taken by storm by the land-forces; and the Spanish ship *San Domingo* being within hail of the shore, *General Dalrymple* ordered an Officer to summon them to surrender, which was accordingly done; and the Spanish Captain came ashore, and delivered up his ship and cargo to *General Dalrymple*. And shortly afterwards his Majesty's ships which had retired from the fort came into the harbour, and took possession of the ship and cargo, and carried them to *Jamaica*.

On the 30th *March* 1780, a Monition issued under Seal of the High Court of Admiralty against the ship and goods as taken by his Majesty's ship *Charon*, in company with his Majesty's ships *Lowestoff*, *Pomona*, *Porcupine*, and *Racehorse*.

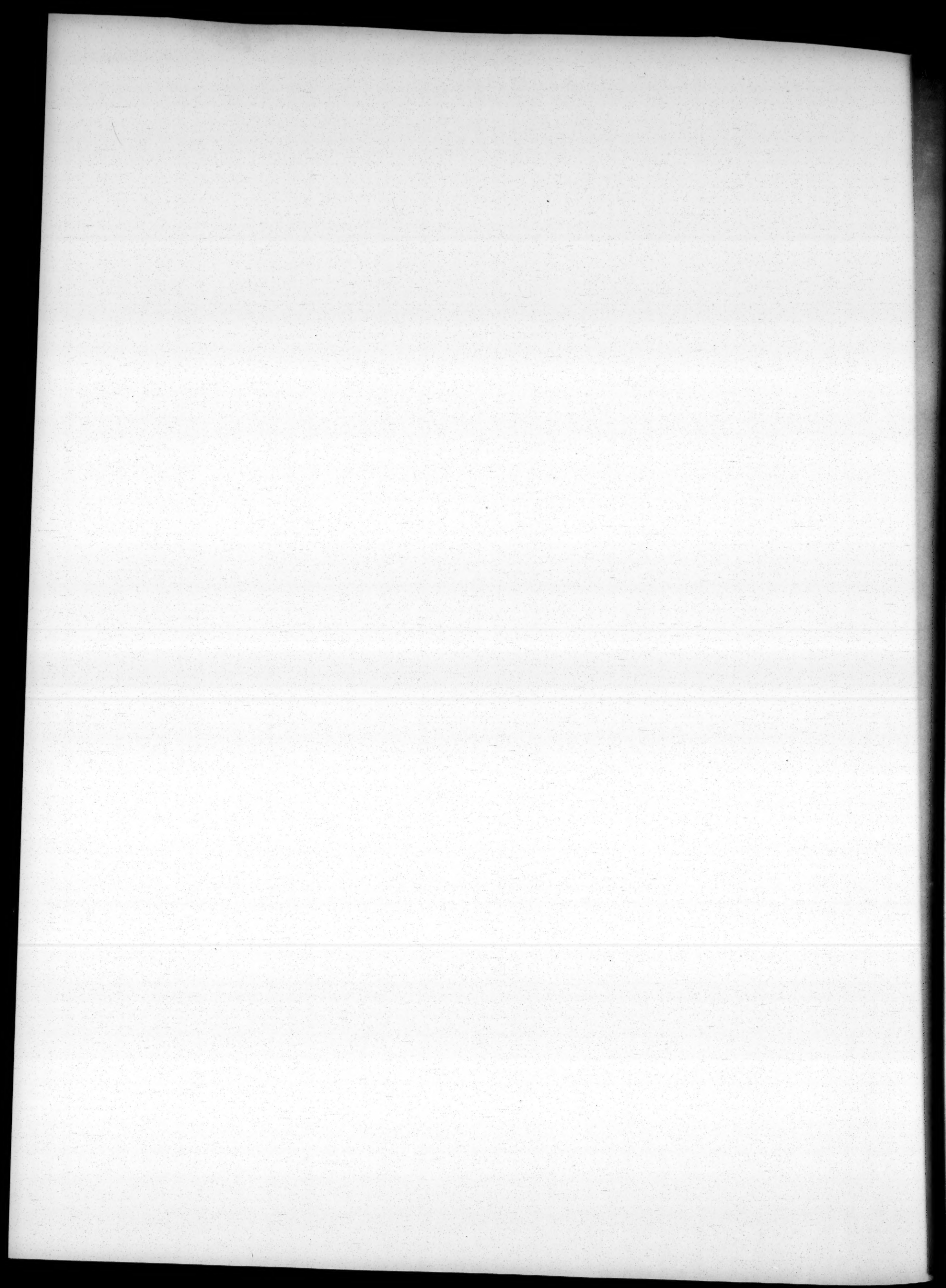
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On the 10th *November*, 1780, the Judge condemned the ship and goods to his Majesty's ships.

Petitions were however presented to the Privy-Council, and the sentence of condemnation to the King's ships set aside, as obtained by collusion.

Here there was a plain and clear co-operation; and the army had the principal share in the capture, but were assisted by the sailors on shore. The first condemnation was to the ships, but the final result is not stated. If the ships had not been at hand, though not then in the harbour, it is not probable the prize would have surrendered to the troops.

F I N I S.

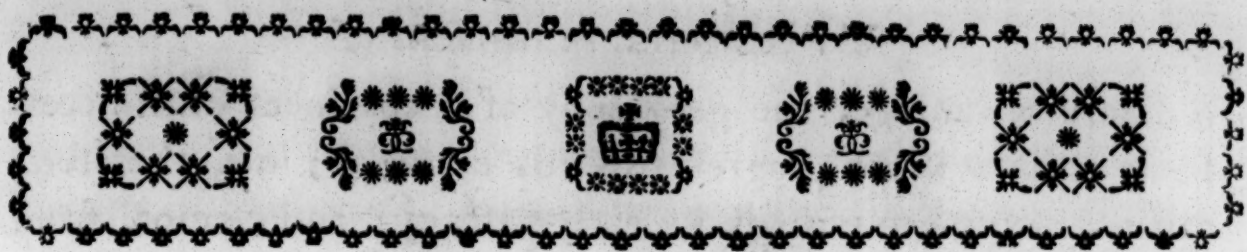


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ON THE
RATE OF TRAVELLING
AS PERFORMED BY
CAMELS;
AND
ITS APPLICATION, AS A SCALE, TO THE PURPOSES
OF GEOGRAPHY.

By JAMES RENNELL, Esq. F. R. S.

From the PHILOSOPHICAL TRANSACTIONS.



O N T H E R A T E, &c.

Read before the ROYAL SOCIETY, March 17, 1791.

AMONGST the discoveries and improvements of various kinds, that may be expected from the very laudable, and, as it concerns mankind in the gross, no less humane and benevolent institution of AN ASSOCIATION FOR PROMOTING DISCOVERIES IN THE INTERIOR PARTS OF AFRICA, that of the geography of the Continent in question may be expected to make the quickest progress: since, in every kind of distant research, whether successful or otherwise, the act of enquiry alone brings materials to the geographer. But, even with every
A ordinary

ordinary advantage, the geography of a continent must necessarily be slow in its progress towards maturity; *we*, therefore, can only expect to witness its early infancy; and cannot, from a view of the present, allow ourselves to predict what its future features may be. Let it be our care, however, to foster it; and contribute all within our power towards its improvement and perfection.

In a case where there is so little probability, even in a long course of time, of obtaining many fixed points by celestial observations (though I hope that one at least will be attempted in the central part of Africa, in our time), it is fortunate that the mode of travelling happens to be such, as serves to furnish a remarkably equal scale: the rate of the camel's movement appearing to be, beyond all others, the least variable; whether we examine it by portions of days, or of hours. In the present state of things, the former mode alone can be used; because few or none of the African travellers carry watches with them: but it may be hoped, that at no very distant period, the time employed on the road may be obtained with such a degree of exactness, as to furnish the geographer with materials of a far better kind, than any of those, formed on computation, that have hitherto been exhibited.

These remarks occurred on the result of an examination, which (though for a different purpose) I lately made into the rate of the camel's movement on the Arabian desert, between Aleppo, Bagdad, and Bufforah: for it appeared to me, that if the African caravans are composed of the same kind of camels, and are governed in their motions and oeconomy by the same circumstances, as those which cross the Arabian deserts; there is no scale, of the computed kind, that can be more applicable to the African geography, than that formed on the camel's rate
of

of travelling. I shall therefore detail the examples from whence I have drawn the proportions for the hours and days journey of the camel, under the two different degrees of burthen, which constitute what is commonly denominated the **LIGHT**, and the **HEAVY** caravan.

The routes which furnish the above examples are determined in their horizontal, or direct distance, by the respective positions of **ALEPPO**, **BAGDAD**, and **BUSSORAH**: all of which have their latitudes and longitudes fixed by celestial observations *. These routes are five in number: and although some of the journals that describe them, contain less information than others, yet all of them have the time given with a sufficient degree of precision, to enable me to found a general rule on. Three of these routes lead across the **GREAT DESERT**, or that between Aleppo and Bufforah; the other two are across the **LITTLE DESERT**, or that between Aleppo and Bagdad.

The first of the Great Desert routes was traced by a Mr. **CARMICHAEL** in 1751. The manuscript copy of his Journal was obligingly communicated by my friend Dr. **PATRICK RUSSELL**; and it manifests a great degree of ingenuity and perseverance in this way. The Author declares, that he was determined to keep a register of the courses by a compass, and to compute, comparatively, if not absolutely, the intermediate distance on each course; by counting the steps or paces of the camel on which he rode, during a certain interval of time; and afterwards measuring a number of them on the ground. The particulars of this operation shall be given hereafter; and

* Aleppo, in Conn. des Temps, lat. $36^{\circ} 11'$, long. $37^{\circ} 9'$, reckoned from Greenwich.

Bagdad, by M. **BEAUCHAMP**, lat. $33^{\circ} 22'$, long. $44^{\circ} 21'$, Greenwich.

Bufforah, by Capt. **RITCHIE**, lat. $30^{\circ} 30'$, long. $47^{\circ} 33'$, Greenwich.

although Mr. CARMICHAEL failed in the attempt to ascertain his road distance by this method, yet his process has furnished others with the means of ascertaining the whole distance in the aggregate, and of proportioning the parts throughout. For, as the direct distance is given by the celestial observations, and a complete traverse table by the journal, the *data* are perfect. And when the reader is informed that Mr. CARMICHAEL's whole line of bearing, *by compass*, between Aleppo and Bufforah, nearly 720 British miles, coincided with the bearing line given by the celestial observations; by which it appears that the error could amount only to the mean quantity of the variation throughout, which might have been from six to seven degrees at that time (1751); he will give Mr. CARMICHAEL credit for much general accuracy. And it is not improbable, that even a considerable portion of the above error may have arisen from the imperfection of his instrument*.

The second journal was kept by Colonel CAPPER, in 1778, and was published several years ago; and the third, which contains little more than the time in detail, was communicated by my friend Mr. HUNTER, who crossed the desert in 1767.

The time given between Aleppo and Bufforah, by these journals respectively, is as follows:

By Mr. CARMICHAEL	.	322 hours.
Colonel CAPPER	.	310
Mr. HUNTER	.	299½

* I find, by Mr. DRUMMOND's chart of the road between Aleppo and Antioch (1747), that the variation was then about 6 degrees westerly. This is proved by comparing his magnetic bearing line between those places, with that given by the difference of latitude. In the head of the Gulf of Persia, the variation was 7 degrees in 1785.

But

But to shew that this difference arose chiefly from the variations in the route across the CHALDEAN DESERT (between Mesjid Ali and Bufforah; see the annexed sketch, Tab. III.), I shall proceed, first, to explain that part of the subject; and afterwards to exhibit the particulars in proof.

Mesjid Ali (or Ali's Mosque) is situated at about two thirds of the distance, and as nearly as possible in the line of direction, between Aleppo and Bufforah; and is a sort of land-mark to the caravans which pass the common boundary of the Arabian and Chaldean deserts. Its geographical position is deduced from bearings and latitudes taken by M. NIEBUHR and others: and therefore, as far as general geography is concerned, it may almost be regarded as a fixed point. Not that the truth of its position will in any shape affect the present head of enquiry; which is entirely directed towards a comparison of the spaces of time, employed between certain points of the route, by each traveller respectively.

Now, that portion of the Desert route between Mesjid Ali and Bufforah, being subject to great variation in the track, as appears by the journals of different travellers; whilst the much larger portion of it, between Mesjid Ali and Aleppo, is very nearly the same at all times; it is very clear, that this latter portion furnishes the properest ground on which to form the comparison: and the particulars are as follow:

Aleppo

	CARMI- CHAEI.	CAPPER.	HUNTER.	
	H. M.	H. M.	H. M.	
Aleppo to Hagla .	11 5	11 24	10 0	Hagla.
Hagla to Ain il Koom .	37 30	41 4	35 0	to Taiba. to Uklet Hauran.
Ain il Koom to Uklet Hauran	80 10	78 41	81 30	
Hagla to Uklet Hauran .	117 40	119 45	116 30	
Uklet Hauran to Al Kadder	53 50	54 45	51 30	
Hagla to Al Kadder .	171 30	174 30	168 0	
Al Kadder to Rackama, op- posite Mesjid Ali .	21 45	19 50	19 30	
Hagla to Rackama .	193 15	194 20	187 30	
Aleppo to Rackama .	204 20	205 44	197 30	

On the Little Desert I have two examples of time, from Mr. IRWIN in 1781, and Mr. HOLFORD in 1780; both of whom kept regular journals.

	IRWIN.	HOLFORD.
	H. M.	H. M.
Aleppo to Ain il Koom.	52 0	46 27
Ain il Koom to Annah on the Euphrates	76 0	80 15
Aleppo to Annah	128 0	126 42

It appears by the journals, that Mr. IRWIN deviated from the usual track in the first part of his route; and that Mr. HOLFORD did the like in the latter part of his; each to avoid an enemy: so that it may be presumed, that the deviations nearly balanced each other (see the sketch).

Between Annah and Bagdad, these gentlemen made part of their journey in the caravan of loaded camels, and partly with *light* camels (that is, without any other load than the rider). Mr. IRWIN employed $62\frac{1}{2}$ hours: but the last 15 hours, on
light

light camels, were at an accelerated rate of half a mile *per* hour, or one fifth part, above the ordinary rate; according to his idea, which I have no doubt was a very just one: and this accelerated rate should add 3 hours to the 15, to reduce it to caravan time; making $65\frac{1}{2}$ hours instead of $62\frac{1}{2}$. Mr. HOLFORD's journey, by the same *ratio*, must be reckoned at 68: but as this part of the two journies is obviously too inaccurate to draw any conclusions from, in the way of comparison, I shall only make use of Mr. IRWIN's time (to which no solid objection can be urged) when I calculate the rate of the camel's travelling.

We have now seen, that on a journey of about 200 hours, between Aleppo and Mesjid Ali, two accounts differ only 1 hour 24 minutes; and a third differs from the mean of the other two seven hours and an half. And we may observe, that if the stage from Aleppo to Hagla be taken out of the question, the number of Mr. HUNTER's hours would be nearer on an equality with the others by about an hour and a quarter (see p. 6.). The reason of the different reports of the distance between Aleppo and Hagla, appears to be, that travellers commonly join the caravans either at Hagla or on the road to it; and they, travelling by a quicker conveyance than camels afford, and then adjusting the time to the caravan rate, make different estimates of the distance. Or there may be some other cause which has not been explained. Four different persons give the time as follows:

	H.	M.		H.	M.
CARMICHAEL	11	5	CAPPER	11	24
HUNTER	10	0	HOLFORD	9	12

So that the proper point of offset in making the comparison,
is

is Hagla. And, reckoning from thence, we have in the first table (p. 6.) the numbers $193\frac{1}{4}$, $194\frac{1}{3}$, and $187\frac{1}{2}$, for the time between Hagla and Mesjid Ali, in the three journies respectively: and the same table affords also the following comparisons between different places on the route:

In one instance, $80\frac{1}{6}$, and $78\frac{2}{3}$;

In a second, $117\frac{2}{3}$, $119\frac{3}{4}$, and $116\frac{1}{2}$;

In a third, $53\frac{3}{4}$, $54\frac{3}{4}$, and $51\frac{1}{2}$;

And in a fourth, $171\frac{1}{2}$, $174\frac{1}{2}$, and 168.

Again, between Aleppo and Annah on the Euphrates, the numbers in the second table stand thus:

128, and $126\frac{2}{3}$.

I think I need not produce any more examples to prove the equal rate of motion of a camel that is in any degree loaded; or rather of a number of camels together, where the rate will be determined by the *slow-going ones*: and whatsoever rate, in actual distance, may be deduced from these examples, must be applied to loaded camels travelling in a body together, and not to light camels, or those chosen for speed, whose rate appears to be at least $\frac{1}{3}$ th greater. By a light camel is meant one that has only a man, or a very small quantity of baggage, on it; whereas a camel's load is 500 to 600 pounds; and camels so loaded, form what is termed the **HEAVY** caravan. **LIGHT** caravan, on the contrary, is applied to camels under a *moderate* load, or perhaps little more than half loaded. And with respect to camels, either *moderately* or *fully loaded*, I can perceive no difference in their hourly rate of motion: the difference alone appears in the length of their day's journey; as we shall perceive hereafter. A camel, it is said, will not permit himself to be over-laden; and this may be the reason why the load does not affect his rate of motion.

It

It appears, that the direct distance between Aleppo and Bufforah, is 621 geographic miles, or 720 British, nearly. And Mr. CARMICHAEL's route, traced by a compass through all its principal bendings, and calculated trigonometrically, gives 688 geographic miles, or of British 797. It follows then, of course, that as the same gentleman was 322 hours on the road, the mean hourly rate of the camel's motion, was 2,475 British miles. Colonel CAPPER's route, though easily traced on the map, is not correct enough in its particulars, to serve as an authority equal to Mr. CARMICHAEL's; and the like may be said of Mr. HUNTER's: but they must both be allowed to corroborate Mr. CARMICHAEL's in a general way; for as nearly as Colonel CAPPER's route can be traced, over the CHALDEAN Desert (and, as we have before observed, the track is nearly the same at all times, in all other parts of the Desert) the hourly rate of his camels was 2,51 *per* hour; and that of Mr. HUNTER's 2,585.

We come now to the LITTLE DESERT route. It has been noticed, that Mr. IRWIN employed 128 hours on his journey from Aleppo to Annah; and 65½ more (allowing for his accelerated rate 3 hours, see p. 7.) between Annah and Bagdad; altogether 193½ hours between Aleppo and Bagdad. The direct distance between those places is 393 geographic miles; and by the route traced by Mr. IRWIN, the *road distance* comes out about 414½, or British miles 480*. And this number, divided by 193½, gives 2,48 *per* hour for the camel's rate; or

* Not that the distance between those places is so much as 480 miles by the direct road: it is probably less than 470. But Mr. IRWIN's party took a circuitous course to the southward, between Aleppo and Ain il Koom, to avoid an enemy that lay in the way. He estimated his distance at 493 miles.

within a very small fraction of Mr. CARMICHAEL's rate; his being, as we have just seen, 2,475.

I think I may venture to rest the calculation of the loaded camel's mean hourly rate of travelling, on the experiments of Mr. CARMICHAEL and of Mr. IRWIN; both of whom appear to have taken much pains with the detail of their journies*; and then it will stand as under:

Mr. CARMICHAEL on 322 hours 2,475 } Mean 2,478 Bri-
Mr. IRWIN on 193½ . . . 2,48 } tish miles.

We have mentioned above, the result of Colonel CAPPER's and of Mr. HUNTER's time, which gave a rate so very near to CARMICHAEL's and IRWIN's: and it may not be amiss to add to these, the result of Mr. HOLFORD's; as well as the estimates of the camel's rate, formed by seven different persons. All these I have placed in one point of view, in the following table.

	CARMI- CHAEI.	IRWIN.	CAPPER.	HUNTER.	HOL- FORD.	PLAISTED.	Anony- mous.
	Brit. mi.						
Estimated rates	2,29	2,55	2,25	2,33	2,24	2,3	2,5
Experiments	2,475	2,48	2,51	2,585	2,5	—	—

Mean of the seven estimates, 2,35.

Mean of the five experiments, 2,51.

Mean of CARMICHAEL's and IRWIN's, 2,478.

* Mr. IRWIN also took the bearings of his course by a compass, though not so much in detail as Mr. CARMICHAEL; but Mr. IRWIN not only remarked the time, but the particular rate of travelling, on each day; which appeared to vary from 2 to 3 *per* hour, but was commonly 2½; and the mean of all 2,55 British miles.

Before

Before I quit the subject of the hourly rate, I shall observe, that the road distances in Mr. CARMICHAEL's traverse table are often thrown together in lines of very considerable length, such as 20 miles and upwards; and very commonly in lines of 5, 6, and 7, and yet are all considered as straight lines. By this mode, it is probable, that many small inflexions passed unnoticed: and therefore the rate taken from the results of CARMICHAEL's and IRWIN's observations, will be rather under the mark than otherwise; but it is obvious, that no kind of rule can be found to correct it by. It is certain, that fewer inflexions are likely to occur in the Desert routes, than in almost any other; not to mention that the long lines of distance happen chiefly in the open, level part of the route. The road distance exceeds the direct distance, by *one-fourteenth part* of the latter only, between Aleppo and Mesjid Ali; amounting to a fraction of $\frac{1}{14}$ British mile on each hour; or in the proportion of $7\frac{1}{4}$ miles on each hundred of direct distance. This, I confess, is much less than I could possibly have supposed; and which nothing short of actual experiment could have induced me to believe. On the whole road between Aleppo and Busforah, the proportion is nearly 11 on each hundred, on CARMICHAEL's route: but his route over the Chaldean Desert was unusually circuitous; and cannot be admitted to have any weight, in the determination of this question.

One would expect that the inflexions of which no account is taken by Mr. CARMICHAEL, would amount to at least half as much as those which are taken notice of; and such addition would make the whole hourly rate 2,56 instead of 2,475. But this is merely a supposition; and it is possible, that the rate may not be higher than 2,52, the mean of the four other experi-

ments. At all events, the error can be but small: and possibly, all circumstances taken into the case (and particularly this remarkable one, that of three persons who attempted to ascertain the rate, by counting and measuring the camel's footsteps, none reckoned it higher than $2\frac{1}{3}$, and one went so low as $2\frac{1}{4}$), I think the rate of two miles and an half *per* hour may be used, as differing but a shade from the general result; and as having the most manageable fraction.

Thus it appears to me, that the hourly rate of the camel may be applied as a very useful scale to the African geography; whensoever the use of watches shall be adopted by the native travellers employed by the AFRICAN ASSOCIATION*; and with still greater advantage, of course, if Europeans are employed. And if Mr. CARMICHAEL could describe the general bearing, on a line of more than 700 British miles, so nearly as within 6 or 7 degrees of the truth; and that with a pocket compass; nothing more need be said concerning the advantages that may be derived from the use of that valuable instrument, aided by such a scale as I have been describing.

The mean length of the day's journey of the camel, varies according to the degree in which it is loaded: and in this particular it is that the state of the camel, as to its burthen, operates on its progress. It is necessary to observe, that whatsoever remarks I may offer, on the subject of the camel's day's journey, are meant to be applied only to the *mean* rate on journeys of considerable length; since any other kind of experiment would be of no use in geography: I shall therefore consider only the progress of the LIGHT and HEAVY CARAVANS, in which

* In the Memoirs of ABDUL KURRIM, a Cashmerian of distinction, he informs us, that he kept an account of the time, on the road between *Bagdad* and *Mecca*, by means of an European watch, in the year 1740.

the camels are left to pursue their journey quietly and at leisure; and with the regularity of a machine: and not that of the LIGHT CAMELS, which are not only freed from incumbrance, but are also urged on.

I have two examples of the heavy kind, and three of the light kind, where the time has been regularly kept: besides a third example of the heavy kind, where the necessary regularity is wanting, but yet containing within itself, evidence sufficiently strong to corroborate the other two.

The HEAVY caravans were those of Mr. CARMICHAEL and M. HOLFORD; the first of 1000 camels, of which 600 were loaded, went, on a journey of 45 days, at a H. M. mean, each day, 7 10

The second, with 50 loaded camels, on a journey of 15 days 7 40

Mean of the two, 7 25

The third, TEIXEIRA, with 130 loaded camels, on a journey of 21 days, *about* 7 30

Mean of all, *per* day, 7 27

The LIGHT caravans were,

			H. M.
Mess. IRWIN,	} from 80 to 100	21 days,	9 12
CAPPER,		33 —	8 38
HUNTER,		34 —	8 45

Mean of the three 8 52

Here then the mean of the heavy caravan day is under seven hours and an half; and that of the light caravan between eight and three quarters, and nine hours.

Some

Some of the ordinary watering places on the Desert, being from 3 to 5 days journey asunder, it may be supposed, that the length of the intermediate journies, would be determined by the known and approved standard of a proper day's walk for a camel: for as they often arrive at the watering-place early in the day, it appears, that the caravan chiefs, do not, by any means, divide the ground between such watering places, into equal portions for marches. This being the case, one may expect to arrive at the knowledge of what is at least *intended* for a proper day's journey for a camel, under the circumstances of the case: and indeed the result is such as to prove what I have before advanced, respecting the length of the mean journies of both kinds. For having selected from the five above-mentioned journals, the length of the *apparently optional* journies in each; it appears, that the heavy caravans went 7 h. 51 m. on a mean of 24 such days: and the light caravans 9 h. 8 m. on a mean of 38 days. In both of which cases, as might have been expected, the length of the mean *optional* day, is somewhat longer than that of the whole journey; in which there is a wider field for delays and accidents. The comparison is as follows:

Heavy caravan.				Light caravan.			
	H. M.	Distance in British miles.		H. M.	Distance in British miles.		
		at $2\frac{1}{2}$	at 2,56		at $2\frac{1}{2}$	at 2,56.	
		per hour.			per hour.		
Mean daily rate of the whole journey . .	7 27	18,64	19,06	8 52	22,17	22,7	
Of optional days . .	7 51	19,62	20,1	9 8	22,8	23,38	

Thus

Thus the mean daily rate of the heavy caravan, appears to be 18,64 British miles, reckoning two miles and an half for each hour; and 19,06 if taken at 2,56: and the mean rate of the light caravan 22,17 miles, at $2\frac{1}{2}$; 22,7 at 2,56.

In order to apply this scale with effect, to the African geography, it is necessary to state the number of days that the caravans usually halt on the road; for as yet I have only considered their rate of motion: but it is evident, that if the length of the journey in the gross, is given, the requisite information will not be obtained, without a previous knowledge of the time lost by necessary, or unavoidable halts on the road. My enquiries have furnished me with an account of 13 halts, to 149 days of travelling; or, which is the same thing, 13 halts out of 162 days, reckoned from the time of departure, to the time of the arrival of the caravans at the place of destination: that is, 1 halt to $12\frac{1}{2}$ travelling days. This, of course, must be deducted from the aggregate of the distance: or, should it be averaged on each day, the heavy caravan day must be reckoned at 17,14 miles instead of 18,64; and that of the light caravan 20,4, instead of 22,17; when the hourly rate is taken at two miles and an half.

It also remains to be stated, from the proportion that the road distance bore to the direct distance, by the trace of Mr. CARMICHAEL's route; what length in direct distance, and in geographic miles, may be allowed for each day, for the heavy caravan, on similar lengths of journey, and over similar tracts of country. It appears then, that on the 28 days between Aleppo and Rackama (opposite Mesjid Ali) the mean length of the day's journey, in direct distance, is about $15\frac{1}{4}$ geographic miles: and on the whole 45 days between Aleppo and Bussorah, 13,8 such miles. But this is without any allowance

ance for halts; which, as has been observed before, require a deduction of 8 parts in 100, to be made from the gross amount of the whole journey, when applied to the purposes of geography.

I have already taken notice, that Mr. CARMICHAEL counted the camel's steps, in order to ascertain a scale of distance; and I shall now give the result of his observations, as well as of Mr. HOLFORD's, who also counted the steps, and measured the length of a number of them on the ground. Mr. HUNTER's experiment was on too small a scale to ground a calculation on. It is certain, that these reports of the number of steps during certain portions of time, and the measurement of a certain number of those steps on the ground, furnish a result that does not agree with the experiments on the great scale; such as we have just related, and which appear to be susceptible of greater accuracy than those made in detail. But it will, nevertheless, be proper to give the results, and to make some remarks on them; if be only to prevent any person in future from founding a calculation on them.

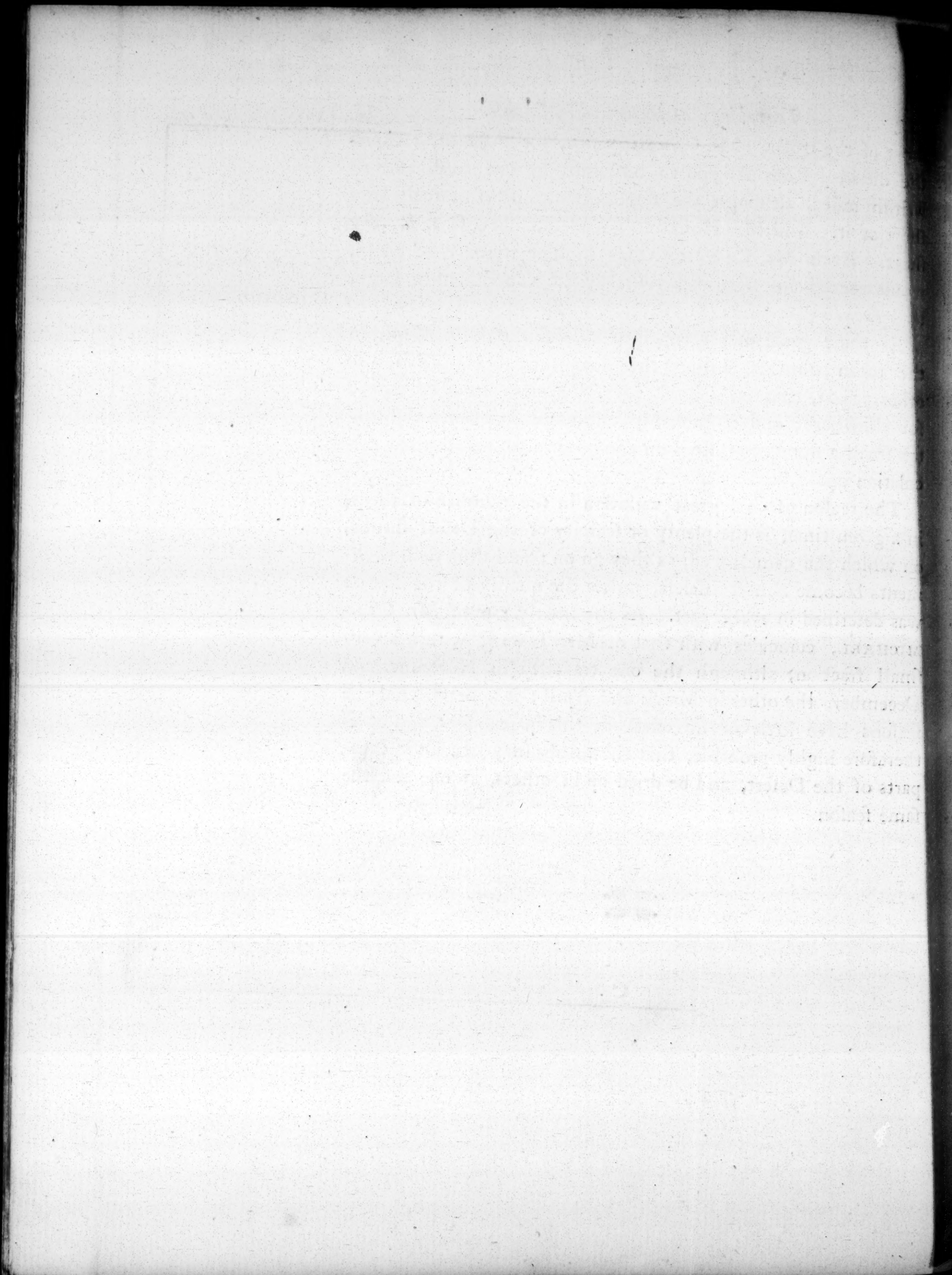
Mr. CARMICHAEL counted the double steps, or rather the return of the same foot, of a camel on which he rode, for an hour together, on 20 different days; at times when, from the nature of the ground, he thought the greatest variation took place, in the rate of motion. He found the greatest number of steps to be 2420, the least 2086; and the mean of the whole 20 hours, was 2200. Mr. HOLFORD reckoned the greatest 2240, least 2060; mean 2150. They both report the double step to be 5 feet and an half. The result of the former account is 2,29 British miles *per* hour; of the latter 2,24; and each allowed his distance accordingly, in his journal: though nothing is more certain than that their computed distances fall very short

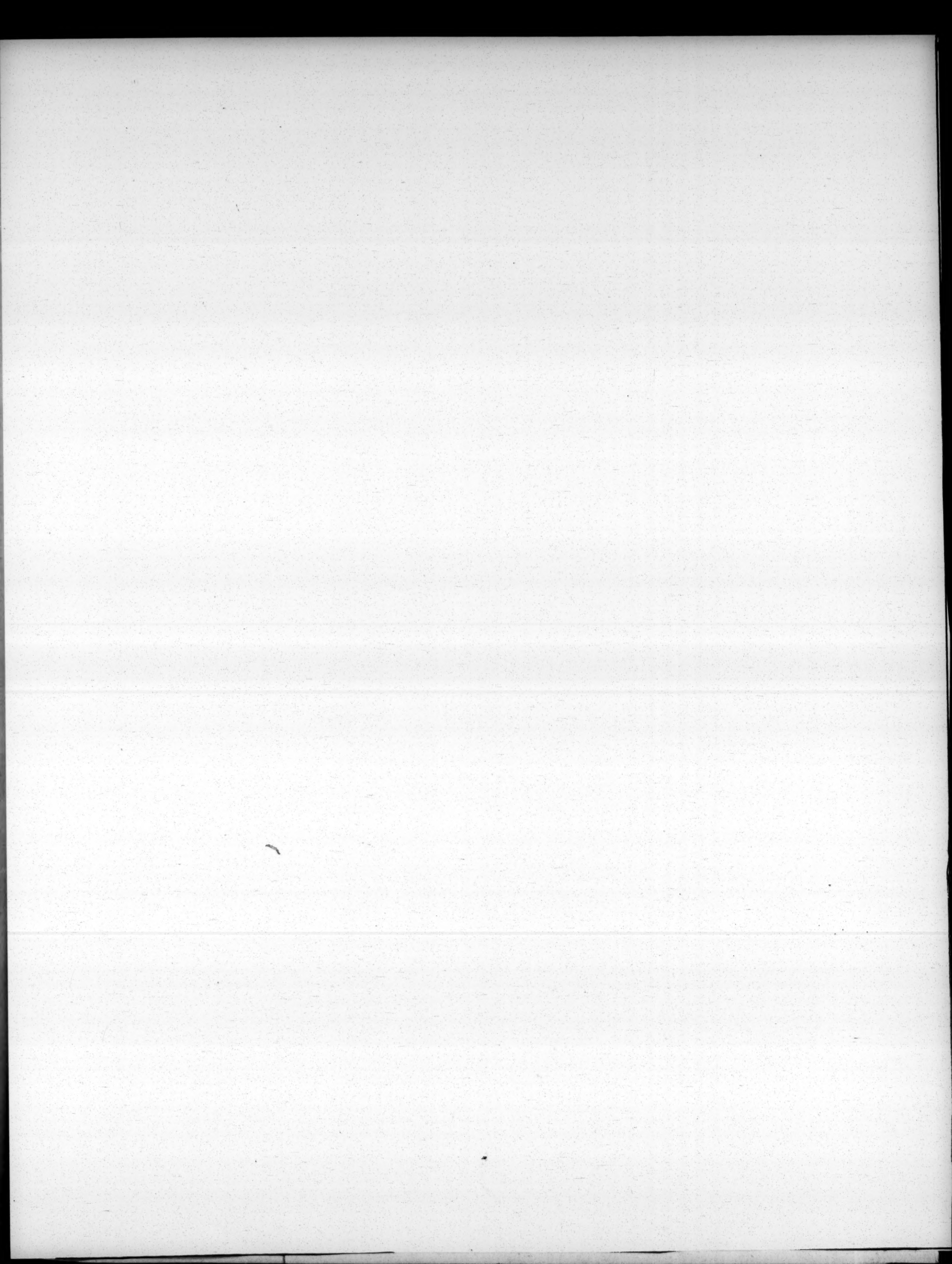
short of the truth. Mr. CARMICHAEL, for instance, reckons the distance from Aleppo to Bufforah, by the road, at 720 British miles, although the direct distance itself scarcely falls short of it. And Mr. HOLFORD's road distance also falls very short. Even Mr. CARMICHAEL's highest number of paces, would exceed the mean rate given by the experiment at large, by a *sixtieth* part only.

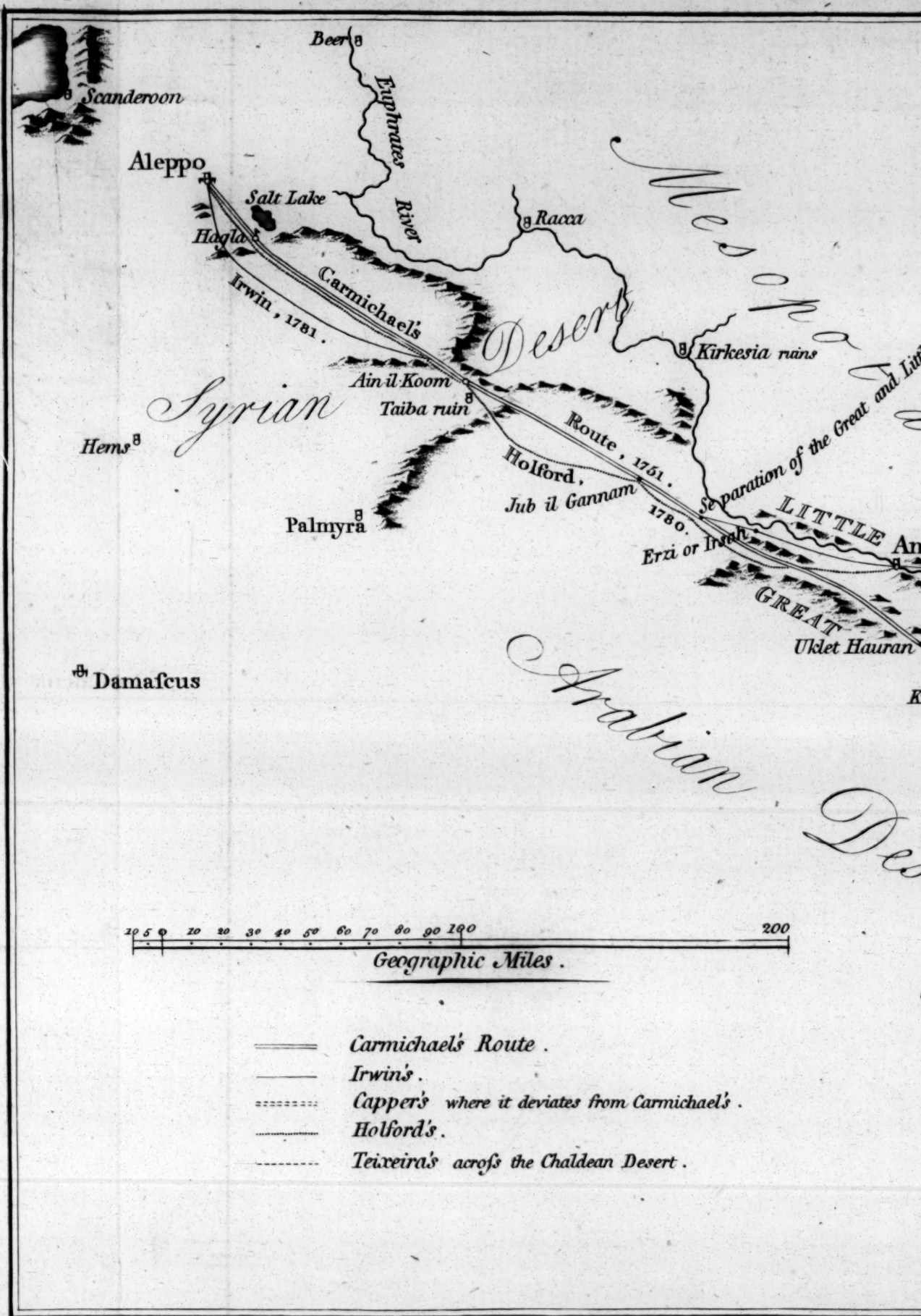
As these gentlemen's experiments differ only 50 steps, in the mean number, during the hour (one being 2200, the other 2150), that is, a 44th part, the error must be looked for elsewhere; and it probably originated in their measuring too small a number of steps on the ground to found their calculation on.

The reason of this great variation in the number of paces, in a given time, is the plenty or scarcity of the Desert shrubs, on which the camels feed, as they go on; and thus such experiments become almost useless, unless the quality of the Desert was described in every part. As the hourly rate of Mr. CARMICHAEL, coincides with that of Mr. IRWIN, within a very small fraction, although the one travelled in November and December, the other in March and April; it appears, that the seasons have little or no effect in this particular: and it is therefore highly probable, that the shrubs may flourish in some parts of the Desert, and be dried up in others, at one and the same season.

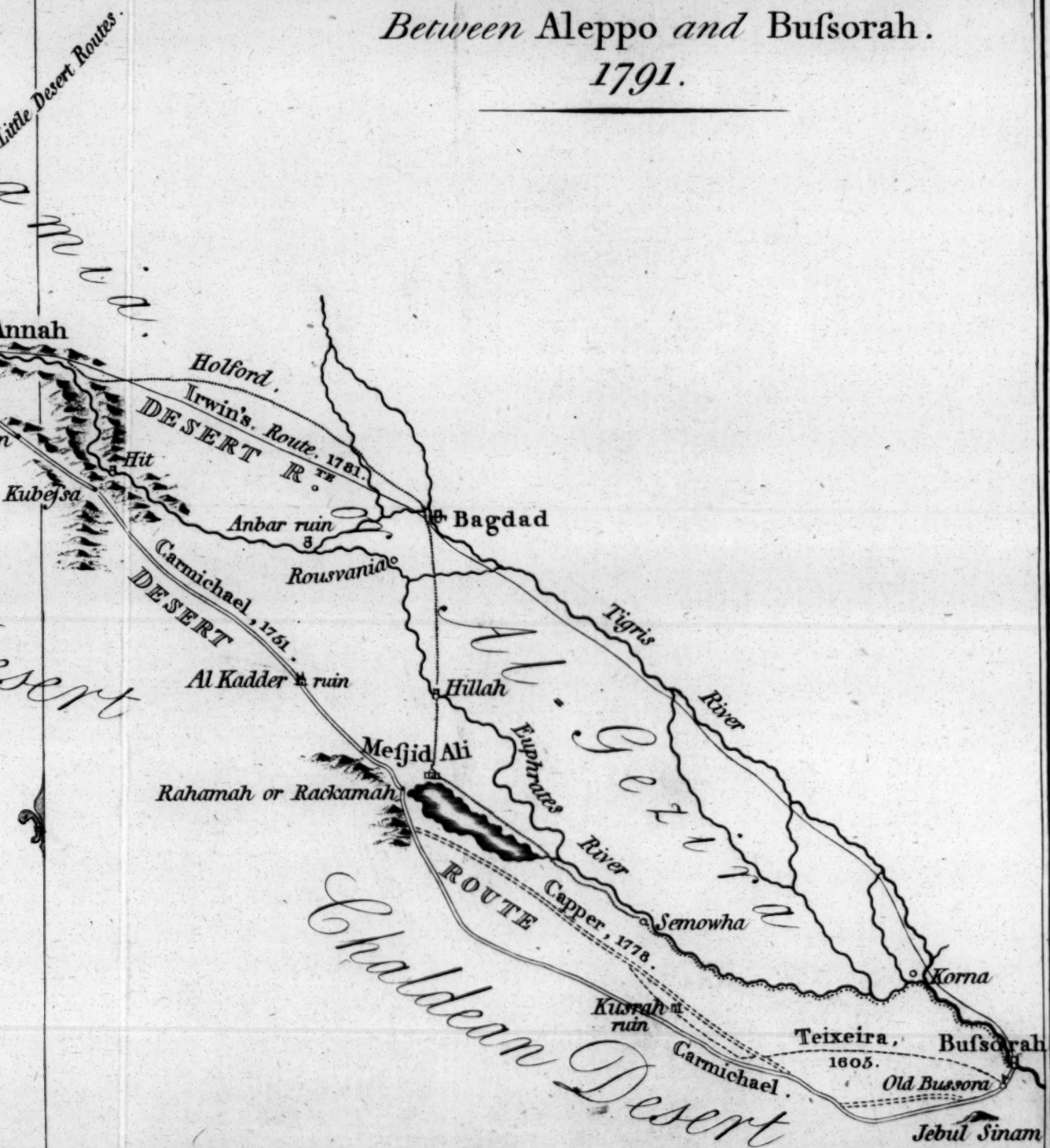








Sketch of the
ROUTES *across the* **DESERTS,**
Between Aleppo and Bufsorah.
1791.



Basire Sc.

